UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

YARON UNGAR, et al — C.A. NO. 00-105 L

Plaintiffs

V

THE PALESTINIAN LIBERATION ORGANIZATION, et al — OCTOBER 25, 2010 PROVIDENCE, RI

Defendants

BEFORE: MAGISTRATE JUDGE DAVID L. MARTIN

APPEARANCES:

FOR THE PLAINTIFFS:

DAVID J. STRACHMAN, Esq.
321 S. Main St.
Suite 400
Providence, RI 02903
401-351-7700

MAX WISTOW, Esq.
61 Weybosset St.
Providence, RI 02903
401-831-2700

FOR THE DEFENDANTS:

DEMING F. SHERMAN, Esq.
2800 Financial Plaza
Providence, RI 02903
401-274-9200

MARK J. ROCHON, Esq.
BRIAN A. HILL, Esq.
655 Fifteenth St., NW
Suite 900
Washington, DC 20005
202-626-5800

OCTOBER 25, 2010

THE COURT: Good morning. This is the matter of the estate of Yaron Ungar, et al vs The Palestinian Authority, et al, Civil Action No. 00-105 L. We are commencing a hearing to address a number of motions. The first motion which the Court intends to take up is plaintiff's judgment creditors motion to preclude, to compel, and for related relief. That's docket number 518. Rather than announce all the motions scheduled for hearing I will announce them as we reach them. So that's the first motion that we will be addressing. The attorneys will please identify themselves.

MR. STRACHMAN: David Strachman for the plaintiffs.

MR. WISTOW: Max Wistow for the plaintiffs.

MR. SHERMAN: Deming Sherman for the Palestinian defendants.

MR. ROCHON: Good morning, your Honor. Mark Rochon, and Brian Hill is with me on behalf of the Palestinian defendants, as well.

MR. HILL: Good morning, your Honor.

THE COURT: Good morning. Thank you, Counsel.

MR. ROCHON: Your Honor, would the Court indulge from the defendants any brief introduction to

the total number of motions we have here or do you prefer to dive into them one at a time?

THE COURT: I'm willing to allow both sides to make a general overview statement of the problem that is presented, or the dispute that exists. I'm cognizant that there is an interrelationship among the motions, and there's some larger issues that once determined probably will impact most, if not all, of the motions, so I'm willing to do that. I will allow you to make a general statement about the issues that you think are common, and then I'll allow plaintiffs to make a similar response to the common issues or general larger dispute that the Court is being asked to resolve and then we'll get into the individual motions. Mr. Rochon, you may proceed.

MR. ROCHON: Thank you very much, your Honor. It's safe to say that there's a real disconnect between the plaintiffs and the defendants as to how discovery should proceed in this sui generous proceeding. There's not really a template out there for you as to how discovery is conducted in connection with a hearing on a motion to vacate default because the evidentiary hearing that's contemplated in this case is not common to motions to vacate default. Often they're decided on the papers or with argument.

In this instance, obviously with the remand from the Court of Appeals the District Court is directed that there be an evidentiary hearing that's allowed for discovery to take place. It is in the context of that directive that all these disputes arise. And in all candor, I think both sides occasionally try to have their cake and eat it, too. Sort of -- each of us have on occasion act as if full discovery as if a trial is coming up is what should take place, and at other times both sides argue, but wait, wait, wait, this isn't a typical trial, and I assign that kind of behavior to both sides. We, and the plaintiffs in this case, have great disagreement, for instance, as to whether or not discovery in the sense of telling each other who your witnesses are should occur. In our view, both by pursuant to interrogatories that have been propounded and the district court's order, the parties should exchange witnesses well in advance of the date for the pretrial filing. The plaintiffs take the position they won't tell us who their witnesses are until after we file our pretrial statement on December 17th. We think they should. We filed our expert reports consistent with the expectation of the rules for a trial. The plaintiffs say, well, this isn't a trial, and those rules don't

apply. On the other hand, we think that their discovery is extremely broad and the kind of thing that you might see in a case with a two year discovery window eventually heading to a trial, and we think that's inappropriate.

THE COURT: Mr. Rochon, I'm informed that another discovery motion has been filed to which the objection period has not yet run. Does that relate to the issue that you just referred to, the identification of witnesses?

MR. ROCHON: Yes.

THE COURT: All right.

MR. ROCHON: And I brought today -- there are two filings that we made on Friday, and I have a copy, courtesy copy for you. One is a reply on the 30(b)(6) motion that's set tomorrow, which is before you already. And the other is the filing that you just referenced. If I may tender these to your clerk.

THE COURT: You may do so but it's not my intention at this point to try to address that motion.

MR. ROCHON: I understand. I think in the course of things, I think it's highly likely it's going to end up with you, but I realize it has not been referred.

THE COURT: All right, you may present it.

MR. ROCHON: So I'm presenting to the Court both of those filings.

Judge, so these overarching issues kind of inform everything that's going on in these various motions, and it is our overall point of view that what you have here is a situation here where we need to move expeditiously through discovery in a very compressed time frame with a limited window for depositions, and that much of the discovery litigation we've been forced to initiate reflects the plaintiffs' approach to this thing as if it's a full bore scortched earth trial, and frankly, in our view, and you're the ultimate decider, much of the requests from the plaintiffs are designed to force us to come before you with these motions so that either in this case or another they can claim that we're no longer compliant with court directives or we don't comply with the Court. It's a theme that we see throughout the pleadings. I'll address it more specifically when we get to the motion related to the prime minister because it's referenced there. But in our view, the overall approach of the plaintiffs in this case puts us in the position of having to come before you with all of these motions when, in fact, we could move through this stuff much more expeditiously, and get

the plaintiffs what they need, and get us what we need, so Judge Lagueux can decide this motion on or after January 10th. These requests, in the way the plaintiffs are proceeding, I know that they say they don't want to delay this matter, but frankly given what we've looked at, and even what's happened this morning, I've been served with seven deposition notices this morning, essentially using up the available space that we have for depositions, which we've been waiting on so that you could decide the 30(b)(6) motion. Seven depositions that were served this morning that could have, of course, been served a long time ago, and we could have been conducting those depositions, or addressing them, but served today. We have a very short window of time. And, frankly, in our view, what's going on is the plaintiffs are trying to use up the space, avoid this thing getting done with the discovery closeout, and the very serving of seven or eight, I don't even know if I have the count right, new deposition notices this morning, puts us in a position of making it highly unlikely we'd be able to do that. We have a discovery cutoff of November 17th or 18th. So that's our concern. I'll save the longer arguments when we get to the actual motions, Judge.

THE COURT: All right, thank you. Who's going to respond? Mr. Wistow?

MR. WISTOW: I will, your Honor, with your permission. To a certain extent, I agree with Mr. Rochon that there are overriding issues that relate to many of the motions in this case. For me to address Mr. Rochon's comments where he says we have an ulterior motive to delay the case and we're not acting in good faith, although they didn't expressly use that term, that's the implication. I do know, although I'm new to the case, that when the issue of scheduling first came up, the defendants were very eager to get a hearing date much much later than the January date. The plaintiffs were very eager to even get an earlier date. We have no desire whatever, I assure your Honor, to continue this matter. Rather than just indulge in generalities, we think each of the motions that are here need to be addressed on the merits of each motion as painful as that may be, there's a lot of them. We spent a good amount of time on this case. Whatever we filed by way of discovery, we think is appropriate. Whatever we filed by way of a motion to compel, we think is appropriate. Whatever we've opposed by way of a motion for protective order on the other side, or objections, we think is productive. To

just throw rockets at each other and say this is just some fiasco, I think the only way to do this, your Honor, is to look at each and every motion separately.

I will say, as I said at the beginning, there are certain overriding issues that relate to all of the motions. For example, the defendants take the position that there should be no inquiry into the reasons for the default, that they've been -- they concede they're willful defaulters and that should be the end of the inquiry. And I concede that if your Honor rules that, that will eliminate a lot of discovery. The problem with that position that's being taken by the defendants, as I would like to elucidate, is it's not well-founded based on the pleadings they filed and, most importantly, Judge Lagueux has entered a specific order controlling that very issue which I'm afraid they don't like Judge Lagueux's order.

Another issue that is very very important in most of these discovery motions is whether or not the motion to vacate which was filed in December of '07, as your Honor knows, some years after the July 2004 default judgment, was timely or not. The defendants are taking the position that it's already been adjudicated by Judge Lagueux and by the First Circuit,

that that's -- that indeed the motion to vacate is timely. If that's true, which we don't agree with at all, that indeed that would eliminate a lot of the discovery. We think we can show conclusively when it comes to those two individual issues, on the individual motions where this comes up, that there simply is no merit to what the defendants are saying. Is this a unique case? Absolutely. Does it mean that we should abandon the ordinary rules of civil procedure that are required to be followed because it's unique and involves extraordinary circumstances? I don't think so, your Honor. We're down for hearing on particular motions. I wish there were some silver bullet to avoid hearing them all but I'm afraid there isn't, and I would respectfully suggest we argue each motion on its merits.

THE COURT: All right. Thank you, Mr. Wistow. With those introductory remarks from counsel, we'll now proceed to commence the hearing on the motions and we'll start with that first motion which is document number 518. The plaintiffs judgment creditors motion to preclude, to compel and for related relief.

MR. WISTOW: Thank you, your Honor. This is not only a unique case in many respects, it's a unique

experience for me because I've been in the case relatively shortly and I'm about to discuss with the Court matters that in many respects I expect the Court knows better than I do what the history is having been involved in this so long. And I say that not to flatter the Court or to be sycophantic. I'm torn between going through a lot of explanations that would ordinarily be made by lawyers before a court versus being in a situation where your Honor has labored with it so many years. And what I basically decided the best thing for me to do is to assume that we're all humans. We don't have total recall, and it would probably be best to repeat with apologies some of the history that I think there's a good chance that your Honor not only knows but perhaps knows better than I do. In the context of the motion with regard to Prime Minister Fayyad, let me say as follows: Basically the context of that motion, and many, not many, virtually all of the motions that we're going to be talking about today follows hard on the heels of the Court of Appeals decision, the First Circuit Court of Appeals decision, this past spring, where basically Judge Lagueux's decision to deny the motion to vacate that the PLO and PA had filed in December of '07, his decision to deny that motion was reversed and remanded

for further proceedings. In essence, Judge Lagueux had ruled that the fact that there was willful default in the case was per se reason to refuse to allow the vacating. The Court of Appeals differed with that assessment by Judge Lagueux and ruled that there was "a unique blend of centrifugal and centri -- I don't even know how to pronounce it, your Honor, so you know what I'm referring to.

THE COURT: I do.

MR. WISTOW: If I had to guess, I would guess centripetal forces. That's at 599 F 3rd 79, and I'm sure your Honor has read this case over and over again in preparation for these matters. But I would like to emphasize just briefly what the Court said which I think is the essence of their opinion, and they said: A variety of factors can help an inquiring court to strike the requisite balance. Such factors include the timing of the request for relief, the extent of any prejudice to the opposing party, the existence or nonexistence of meritorious claims of defense, and the presence or absence of exceptional circumstances. This compendium is neither exclusive nor rigidly applied, rather the listed factors are incorporated into a holistic appraisal of the circumstances. I think that's probably the key word, the holistic

appraisals. In a particular case, that appraisal may or may not justify the extraordinary remedy of vacatur.

Now when the case came back to Judge Lagueux, on April 1, 2010, he entered an order, docket 519 in this case, it appears that it's Exhibit A to the memorandum in support of the instant motion that we're arguing today, and what Judge Lagueux said, and I quote because I think this is a very very central issue, this is post-remand from the circuit, and Judge Lagueux's statement of what he intends this hearing in January to encompass. He says, in view of the fact that the Court of Appeals has stated that when a party is moving to set aside a judgment that was secured by intentional and deliberate default, the matter is fact specific, the Court will hold an evidentiary hearing to determine precisely, and I think this is key, your Honor, precisely what the facts are concerning the deliberate decision to default and the factual circumstances surrounding that matter.

The history of why this came up, in my opinion, is because the defendants themselves made this the very very central issue. Originally in their motion to vacate, which was denied by Judge Lagueux, and also importantly before the Circuit Court of

Appeals which listened with sympathy to their plea that they be allowed to come back and make a showing beyond the fact that they were defaulted, and I'd like to quote for you what the defendants themselves said in the motion to vacate which, your Honor, I would point out, is the presently existing motion before the Court that is to be heard in January. There has been no subsequent revision of the motion to vacate. What we're going to be hearing in January of 2011 is the motion to vacate that was filed in December of 2007. And what the defendants said, and this is docket 408, in that case, and I hope your Honor indulges me. I understand we need to get to the fired (inaudible) issue, but I think preliminarily I would like to make these background statements. What the defendants said in the motion to vacate, which is docket 408, and specifically on page 38 and 39, is as follows, and this is their words: Vacatur is also warranted because of the significant foreign policy consequences that have flowed from the $116 million default judgment entered in this case. As Prime Minister Fayyad's declaration makes clear, and I'd like to emphasize this, this judgment has already been the subject of diplomatic communications at the highest levels between our country's representatives in the state

department and the governing officials in the occupied territories. If left intact, the judgment threatens to undermine the relationship between the United States and Palestinian Government, a relationship that the executive branch of the United States Government has characterized as being crucial to the Israeli/Palestinian peace process.

Now the defendants said in their brief to the First Circuit on appeal, at page 43, "Here the $116 million default judgment has been a recurring issue in the PA and PLO's interaction with the United States Department of State. And, in part, in part, they relied on a letter that was sent by Prime Minister Fayyad, the deponent in question in this motion, to Secretary of State -- then Secretary of State Condoleezza Rice, a letter dated June 18, '05, and that letter indeed is attached as an exhibit to the motion to vacate filed in December of '07. It appears in -- it's docket 408-2. There's also Exhibit D to the present motion. And what Prime Minister Fayyad said was, "I am writing to request your immediate assistance in addressing what has become a serious obstacle to the continued effective participation of the Palestinian National Authority (PNA) in the Middle East peace process, and the PNA's role as a strong and

viable partner of the United States of America and the Government of the State of Israel in that process. In particular, we believe that the actions of the plaintiffs in the Ungar case directly interfere with the United States Government's conduct of foreign relations in the Middle East to the grave detriment of the Palestinian people. More specifically, we believe that actions taken by the plaintiffs under the authority of the district court are inconsistent with the United States' longstanding commitment to an investment in the Middle East peace process."

Now, your Honor, that's certainly heady material.

THE COURT: Those last two quotes that you read to me, Mr. Wistow, do you know which pages or letter they appear on?

MR. WISTOW: I --

THE COURT: If you don't, it's all right.

MR. WISTOW: I don't off the top of my head. I represent to your Honor --

THE COURT: I'm sure it's in there.

MR. WISTOW: Yeah.

THE COURT: All right, continue.

MR. WISTOW: If it's important, I can locate it.

THE COURT: I can find it.

MR. WISTOW: Okay. The -- did you say Page 4? Mr. Strachman has pointed out to you that it appears -- the first paragraph I read to you is on page 1, then the second paragraph is on page 4, your Honor.

THE COURT: Thank you.

MR. WISTOW: And, you know, having been confronted with these very weighty concerns, among other arguments, the Court of Appeals remanded the case. Talking about these possible exceptional circumstances. And as your Honor knows, on June 1, 2010, Judge Lagueux entered his pre-hearing order, not pretrial order, and I say that with reference to the issue about disclosure of witnesses under Rule 26(a)(2). We've, believe me, your Honor, punctiliously tried to adhere to any orders of the Court. The last thing in the world we want to do is be in arrears on something in as important a case as this.

In any event, on June 1, 2002 (sic), Judge Lagueux entered a pre-hearing order where he specifically laid out what the discovery schedule was going to be, when pretrial memos would be sent out, and the like. On July 28, 2010, Prime Minister Fayyad

was, indeed, deposed in East Jerusalem by this speaker, and I might say quite an adventure for me.

Your Honor, what's obvious is the defendants have made such an issue about foreign policy, their communications with the United States, and were successful in getting a reversal of Judge Lagueux. I can't put myself in the minds of the First Circuit. I don't know what determined them and what didn't, but I know that argument was made before them, and I know that the First Circuit was very concerned about -- I shouldn't say concerned, was very interested in the foreign policy implications and remanded for Judge Lagueux to consider all that in his holistic approach to the case.

Now, why are we pressing this? Why are we making such an issue out of this? What we would like to show Judge Lagueux, if we're fortunate enough to be able to do it, is that this is not in the foreign policy interest of the United States. The United States simply doesn't care. And I think I said that a little bit too brusquely. I shouldn't say they don't care. I think it's a little bit more complex than the plaintiffs would like -- the defendants would like to make it out. For example --

THE COURT: Mr. Wistow, I don't want to

interrupt and derail you, but in reading the memorandum, I believe when I read your reply, it seemed to indicate that because the defendants were not going to rely upon any foreign policy arguments that were not in the public record, that the plaintiffs would withdraw that prong of their motion provided that commitment by the defendants were memorialized in an order. Is that correct?

MR. WISTOW: That is correct, your Honor.

THE COURT: It sounds to me as if you're arguing a point that, when I read the memorandum, I received the impression this might be an issue that, in fact, had been resolved. Am I mistaken in that, or do you just feel it's important to recite this background material and then get to the point where because they're willing to rely on the public record that portion of your motion, that prong of the motion, need not -- you're withdrawing. Could you perhaps just enlighten me? I'm sitting here listening to what you're saying, but it's coming up in the back of my mind, is this an issue I'm going to have to decide because there was some suggestion in the memorandum that the parties on this one issue had, in fact, reached some sort of an agreement. Could you just enlighten me so I'll know whether I'm going to be

ruling on this part of the motion or not.

MR. WISTOW: Fair enough. If indeed there is an agreement, which -- and the Court anchors it, so to speak, with an order, then your Honor's quite right, that aspect of our motion does become moot.

This background is relevant on two other aspects of the motion. The motion does not become completely moot by virtue of the agreement. I would ask with the Court's indulgence because I think your Honor is exactly right, we can shorten this somewhat if indeed there is an agreement that all that the PLO and the PA will rely on in support of the foreign policy issues are publicly available materials.

THE COURT: Mr. Rochon.

MR. ROCHON: Can I approach the lectern, not to take it away from Mr. Wistow but just to see if we can get there.

THE COURT: With that condition, I'll let you approach, but you're not going to -

MR. ROCHON: I'm not going to usurp it. It's just on this one issue, and his notes are still here, and I only brought this -- you asked me a question I've got my notes.

THE COURT: Briefly. Briefly answer the question.

MR. ROCHON: I will. First of all, number 1, we're certainly not relying on anything said between Mr. Fayyad and the United States of America whatsoever in any conversations for the foreign policy arguments. We are, in terms of the United States' position and impact, we think that the United States has spoken through its official channels in regards to this matter, and we're not going to be trying to rely on the United States speaking in any other way, meaning we're not going to be presenting evidence that the United States really thinks acts even though they're letters to Judge Marrero and Judge Kessler, have said why.

THE COURT: Are those official channels public?

MR. ROCHON: Yes, and the plaintiffs have them. Those are written communications. The only other communications on this issue that exist, that I know of, are the letters of the Prime Minister that Mr. Wistow has just been talking about, and obviously the Prime Minister does not speak to the United States. The United States foreign policy interests are, of course, spoken to by the United States, not by foreign officials. I think, in other words, we're in agreement, the only question -- I don't want to get --

I don't want to later have someone think I violated an agreement, as to what's in the public record. The public record includes the letters that are in the public, and the statements of the United States to the various courts. We are not relying on any other communications with the United States or from the United States in this matter.

THE COURT: All right. Thank you, Mr. Rochon.

MR. WISTOW: I don't know for a fact whether or not the letters that we're talking about are part of the public record to be candid with you, but not to prolong the matter --

THE COURT: Well, Mr. Wistow, I mean the letters are in the record in this case.

MR. WISTOW: In this case, yes.

THE COURT: The record in this case is public, I believe.

MR. WISTOW: Yes.

THE COURT: All right. So --

MR. WISTOW: Fair enough.

THE COURT: Given the statement by Mr. Rochon, it appears that as long as the Court memorializes the agreement that's been made in the order that I will issue, that portion of the instant

motion, that prong, you would withdraw, correct?

MR. WISTOW: Yes.

THE COURT: All right.

MR. WISTOW: I think I would be less than prudent if I weren't exactly clear on what the order would say. Let me restate it, as I understand it. It's that the defendants will rely on nothing other than what is in the public record with regard to the issues of what is in the foreign policy interests of the United States. That's what I understand.

MR. ROCHON: We rely on no other communications. We've already tendered an expert to the plaintiffs, and a report from the expert, as to this expert's view of the foreign policy impact. That's an expert that they have his report. He's not going to rely on any communications that aren't in the public record.

MR. WISTOW: Well, that's part of my problem, your Honor. I mean, if the agreement is --

THE COURT: All right. Make your argument and I'll rule on this matter. Go ahead.

MR. WISTOW: Thank you. With apologies, your Honor, I'm not trying to drag this thing out. Our view on this issue of the public policy is that Judge Marrero this appears as docket 519-7 in the docket of

this case, Judge Marrero in the Knox case vs the PLO, sent an order to the United States in December -- coincidentally in December of '07, the same month that the motion to vacate was filed in this case, ordering the United States to express as to whether or not it contemplates issuing any suggestion of interest in the resolution of this case or, or in any other of the similar cases pending in other districts, and the United States did reply to Judge Marrero in February of 2008 and stated -- I'll read just very briefly from the rather lengthy reply, "United States respectfully informs the Court that it declines to file a statement of interest concerning the Rule 60 issues presented by this case." That, too, was a motion to vacate. "But we'll continue to monitor this and other cases like it. The United States has not decided whether or not to participate in those other cases. The United States supports just compensation for victims of terrorism from those responsible for their losses and has encouraged all parties to resolve these cases to their mutual benefit. At the same time, the United States remains concerned about the potential significant impact that these cases may have on the financial and political viability of the defendants." So the United States sent a very diplomatic letter

saying, you know, we feel for the plaintiffs and we're concerned about the defendants but refused to file a statement of interest. That was in February of 2008. Now when we deposed Prime Minister Fayyad in East Jerusalem, I asked him whether or not he was in contact with the United States post that filing in the Marrero case and asked them whether or not to file a statement of interest, and he was not allowed to comment on that. There was an instruction not to answer

THE COURT: And what was the question that he was --

MR. WISTOW: Here's the question. I'll read it precisely. "Mr. Wistow: I didn't even ask him that. All I said to him was, did you ask them if they would file a statement of interest in these cases. That's all I asked. That's pretty straightforward." The preamble to that, your Honor, is there's no dispute, this was within a year before the deposition, which was 2010, so it was sometime in 2009, long after the United States had refused, and he indicated these were people at the State Department that he spoke to about this.

THE COURT: What page of the transcript does your question appear at?

MR. WISTOW: Yes, this is page 43.

THE COURT: All right. Please continue.

MR. WISTOW: And it's attached as Exhibit A. I'll just read you what he said. Mr. Rochon, if your question is that, and you're not going to claim it's a waiver of diplomatic privilege, then I said I will not, Rochon, as long as we're on my time, do you want to tell me, he's out of the room, do you want to tell me where else you're going to go and we can hash out the diplomatic issues now on my nickel. Mr. Wistow: I'd rather not. Mr. Rochon: All right. Mr. Wistow: Because I'm not -- I don't know where I'm going, if you haven't figured that out yet. It's an embarrassing admission on my part. It's a little loosey-goosey, I said. Mr. Rochon: I'm offering it to you because we'll be back on your time soon. Mr. Wistow: I guess in fairness to you, if he says yes, he did ask them for it, meaning the statement of interest, I'm going to ask him did they say yes, did they say no, did they say maybe. That's all. Mr. Rochon: Well, then, well I know that's all -- that's what implicates diplomatic privilege.

Now in response to the merits of this issue, I understand there's an attempt to come to an agreement about this, and I dearly would love to come

to an agreement, but I'm very reluctant to, you know, waive this and have some agreement, the parameters of which I frankly don't understand. The defendants' claims on the merits with respect to not doing this is that, Number 1, there never was an instruction to the witness not to answer. That's palpably not so, your Honor. And I refer you to page 63, and I quote: "Mr. Wistow: All I'm asking is did he ever ask for a statement of interest? Mr. Rochon: I'm not going to let him answer that now on diplomatic privilege grounds. We'll take it now. You're setting me up to lose. I said I'll do it if that was all you were going to -- and so I suggest that -- I don't know Mr. Rochon well, but from the little I've seen of him he seems to be a decent gentleman, I think he probably didn't read far enough in the deposition when he says that there was no instruction to the witness.

His second argument is that we didn't go to Judge Magistrate Martin for a decision on this issue while we were in Jerusalem. Now, as we've provided in our papers in this case, your Honor, there's no dispute, there's been controversies between the plaintiffs and defendants on everything you can imagine. It's sad to say. When the issue of taking the deposition of Prime Minister Fayyad first came up,

Mr. Strachman sent an e-mail to the defendants. It appears as Exhibit C in our memo. It's docket number 563-3, and Mr. Strachman said, if you are still concerned about wasting Fayyad's time, I will be glad to hold the deposition in the afternoon Jerusalem time on a day that the court is available so that you can phone the court and seek to bar lines of questioning that you believe are irrelevant.

Now the defendants clearly accepted this condition, or this proposal. For example, in the deposition transcript of Mr. Fayyad, for example, at page 56, when we got into a controversy on this, Mr. Rochon said I need to discuss it with you first before I take it to the Judge. And then on page 61, Mr. Rochon said, I'm going to have to take this to the Magistrate Judge. Now, I said, and this appears, your Honor, on page 63, see if you can get the Magistrate. You know what I'd rather do? You know what I'd rather do? Let's set this question aside and let's go forward and get a whole list of questions to ask the Magistrate at once otherwise -- Mr. Rochon: We're fine with that. Mr. Wistow: It's going to be a disaster. I had visions of, you know, calling your Honor up every 15 or 20 minutes with some question out of context. I have to say in candor, I know your Honor

had a telephone conversation -- conference, rather, about this deposition with Mr. Strachman and representatives of the defendants. I was not on the line. My impression was your Honor made no commitment to rule on anything. I think, you know, we're talking about complex issues of diplomatic privilege. I made it clear at the deposition that I'd want to brief these things. These are not, you know, run of the mill kind of things. In any event, what happened was my portion of the deposition concluded at 5:02 Providence time. At that point, Mr. Rochon chose not to call your Honor either because he thought you were gone or -- I don't know why, but he decided that he would begin examination of Mr. Fayyad himself, which he did, and I redirected after Mr. Rochon, and it went back and forth as lawyers do, they never put an end to it, and the deposition didn't conclude until 6:02, and nobody called.

THE COURT: Mr. Wistow, you have ten more minutes on this motion.

MR. WISTOW: Yes, your Honor. Okay. The second point that I would like to make is that there was a declaration sub -- the declaration was submitted to the Court. I asked Mr. Fayyad if he prepared it, prepared the declaration. He was absolutely

instructed not to answer. We filed a motion to compel an answer to who prepared the declaration. We were served with an errata sheet, literally an errata sheet, that said that they're changing the answer from we're going to get into privileged areas to the declaration was prepared jointly by me and lawyers at Miller and Chevalier who are counsel for the PA and the PLO, Walid Najjab who I had retained through his company, Management Consulting Services, to facilitate communication between myself and the U.S. Attorneys retained to defend the P&A and PLO in litigation brought against them, and the U.S. was involved in the communications, et cetera, and they said the reason for the change in the errata sheet was to: "The objection is hereby withdrawn and the responsive answer is provided." Now, what that does, your Honor, is it makes a deposition a kind of a take home exam. You know, you say whatever you want to say and then make, you know, wildly substantial changes to it. This is not, you know, a typographical error or an answer, I made a mistake, I want to correct it. This is, I'm not going to give you an answer, now I've decided since you filed a motion here's the answer. We were precluded from getting into any questions about Najjab's participation, who he was, what he was

paid, what he was doing.

The last item that -- by the way, the item I just addressed has nothing to do with the agreement. We press that issue, regardless.

The next item also has nothing to do with the agreement. We asked the deponent what did he mean, and what knowledge did he have of certain statements he made in the declaration, which he submitted to this Court and to the First Circuit, and he said, for example, he said, in the motion to vacate to this Court, he refers to the letter, and he says, "I emphasize in my letter that the attempts by plaintiffs' counsel to interfere with the actions of the Palestinian government around the world was 'not supported by U.S. law and ran counter to international law." And I asked him in the depo at page 116, flat out, I'll read you what I said, "Now what laws were you referring to? What was the basis for your statement?" Now this is presented to this Court, your Honor, by the declarant Fayyad under oath. "Now what laws were you referring to? What was the basis for your statement that the attempts by plaintiffs' counsel to interfere with the actions of the Palestinian government was not supported by United States law? What knowledge did you have at the time?"

And he was flat out instructed not to answer on the basis of attorney/client privilege. And I submit, your Honor, the law is very very clear that when one is asked facts, even if he's learned those facts from counsel, he cannot refuse to disclose those facts, a fortiori in a situation where he gives an affidavit to the Court saying that there's been a violation. There's a case directly on point I cited in my brief. The bottom line is what are we talking about overall in this situation? What's the context where we are? There was a final judgment in this case in July 2004. The case was over. It went to the Court of Appeals. The Court of Appeals affirmed the judgment. They attempted to go to the U.S. Supreme Court. The Supreme Court denied certiorari. They came forward and they filed a brand new petition, and in that petition they seek to vacate it. The burden is on them as petitioners to prove their case. They've made all kinds of statements in support of that proof we're trying to test. Judge Lagueux said in his April 1st order in this case within two weeks of the remand, and I quote what he said, "The defendants will..." this is at docket 519, your Honor. "The defendants will have the burden of proving a variety of factors set forth by the Court of Appeals which would justify a vacation

of the judgment under these circumstances, including exceptional circumstances." In sum, your Honor, I thank you for your indulgence in the time you've allowed me. In sum, what we're saying is, they told the Court vacate this and we'll be cooperative, we'll give you discovery, we'll this, we'll that, in the trial on the merits once you vacate. We can't get discovery now, really, when they're in a position where the burden is on them, where Judge Lagueux's made it clear that they have the burden. Having said all that, your Honor, we believe we're entitled to continue with the deposition of Fayyad. We've asked that he be brought to the United States. I realize he's a high ranking official. If your Honor is troubled by that, we're happy to go -- we're not happy, we'd go back to East Jerusalem. We would ask that the expenses associated -- the extra expenses associated with that trip be borne by the defendants. Thank you, your Honor.

THE COURT: Thank you, Mr. Wistow. Mr. Rochon.

MR. ROCHON: Thank you, your Honor. Your Honor, there's three potential communications at issue here. Number 1, the conversation that Prime Minister Fayyad had with state department officials which had

never been mentioned before in any pleading, discovery, reference, affidavit, declaration, anywhere by us until Mr. Wistow asked the Prime Minister about it, and we've never relied on it for any purposes. That's number 1.

Number 2 is a declaration signed by him in December of 2007 in connection with our motion to vacate.

Number 3 is a letter he wrote in 2005 that was appended to his declaration. Three statements, one of them only potential, the conversations with the state department officials.

Before I get there, though, I want to get to the ad hominem part, page 3, footnote 3 of plaintiffs' reply suggests that my client has continued to engage in recalcitrant conduct, and they cite four cases. I'd like to kind of walk the Court through those because this is something we hear a lot and it's even how Mr. Wistow closed that we still don't cooperate with the courts. They cite the Gilmore case where the court suggested that we have chutzpah, and our client had chutzpah in connection with something to do with a bond. Two points about that one. Number 1, the Court misunderstood. We had offered to post a bond if vacater was granted. It would be paid to the

plaintiffs if there was further defaulting conduct. The Court thought that what we had offered in our motion to vacate was we would only provide the funds if there was another default. That would be chutzpah, but it's not what we had said. Here's what's most important. That statement by the Court was made in her order granting vacater. To the degree the Court had concerns about the conduct of my client, it's safe to say that she resolved them in my client's favor in the very order cited by the plaintiffs in footnote 3, page 3 of the reply brief.

Number 2, the Saperstein case, they cite, and they cite a statement by the Court but they fail to tell you that the Court in that statement was complaining about the difficulties of both parties in connection with a discovery dispute. It's safe to say discovery disputes happen all the time, and courts frequently make statements that amount to a pox on both your houses. That was the context of the statement she had made, but what's most important is in Saperstein which was vacated, another default judgment vacated, the defendants went through two years of discovery successfully. The Court -- the case was recently dismissed voluntarily with prejudice by the plaintiffs, and in the last order the Court

issued before the plaintiffs moved, the Court was not critical of both sides but instead noted that the difficulties in connection with discovery in that case arose with the entry of new counsel for the plaintiffs. She was not critical to the defendants. She was, in fact, critical to the plaintiffs' counsel in an order she issued on October 4th. Knox, they cite, and here the cite is even more distressing, the quote they offer is the Court discussing the plaintiffs' allegations. The plaintiffs allege the defendants weren't cooperating with discovery, and the Court discusses that. Subsequently, the Magistrate Judge in that case assigned to handle discovery, in a February 17, 2009 order, said, and I quote -- I'll start the quote in a second. He reached a, "conclusion that defendants had not improperly failed to comply with court discovery orders. If the Court had reason to believe that defendants had failed to comply with its orders without justification it would have ordered further discovery."

In Biton, which they cite, the Court referred to a motion to vacate as "an effort to derail conclusion of this hory (inaudible) litigation." Indeed we filed a motion, and it could be characterized as an effort to derail conclusion. It

was a motion to vacate. That case was dismissed with prejudice by the plaintiffs. In fact, your Honor, of the four cases cited by the plaintiffs, Knox settled, Saperstein was dismissed with prejudice, Biton was dismissed with prejudice, and Gilmore were actively engaged in discovery. The defendants actually resent the suggestion which is repeated that they're not cooperating with discovery in these other cases. Allegations made by the plaintiffs but not by the courts.

As to the matters that are at hand, the statements that are -- with the Prime Minister -- I'd like to step back on a procedural point. Maybe we've reached agreement, and let me just be clear so that you can decide whether we've reached agreement. Our expert does not rely on any statements that are other than the public statements about which we've discussed. He doesn't say I had conversations with state department officials. He doesn't reference personal knowledge of the United States foreign policy interests. Our expert report which we served on the plaintiffs consistent with what we think are the rules that should be involved in this matter is available to them and does not reference any such private statements. So I think this may be a mountain out of

a mole hill and we have an agreement, but just in case, the plaintiffs make a couple of arguments. First is that you were on call but only for us. That only we could raise discovery issues with you at the Prime Minister's deposition. They could not. I frankly have never heard of such a thing. And it's belied by Mr. Wistow's own conduct in the hearing in which he says at one point, quote, and this is on page 63, lines 4 to 6, "Why don't we do this, why don't we get an answer just to that question so that we can talk to the Magistrate." A few lines later, Mr. Wistow, these are lines 15 to 16 on page 63, "See if you can get the Magistrate." Obviously this late developed notion that you were only available if we raised a discovery issue and not if they wished to raise one is -- I got to think it's an ad hoc -- I don't know what it is. I've never heard of anything like that.

Next point, your Honor, the notion that the Prime Minister was instructed not to answer a specific question. I'd ask the Court, when you review this transcript again, to go to page 59 where it says in parenthesis on line 12, (the witness leaves the room). The Prime Minister is not in the room during the colloquy between Mr. Wistow and myself, it goes from

page 59 until the Prime Minister comes back into the courtroom, and just in case there is any suggestion that I'd instructed him in the interim, I never leave the room and we never take a break before he comes back in there, on page 64.

THE COURT: Excuse me, Mr. Rochon.

MR. ROCHON: Yes, sir.

THE COURT: Exhibit E, and Mr. Wistow, this may be directed to plaintiffs, I've got your motion it has exhibits, and Exhibit E are pages 1 to 61, and Exhibit F is on pages 114 and on, so when Mr. Rochon refers to page 64, okay, that's -- let me just ask this, do I have the entire transcript?

MR. ROCHON: You do, and it's --

THE COURT: Fine. I know. There are multiple -- as long as I have the entire transcript, I can find it. Please continue.

MR. ROCHON: All right, thank you. So you will see when you have that opportunity, and just for your clerk's record, it's D to their reply. So the plaintiffs supplied the entire transcript. The witness re-enters the room on page 64, and Mr. Wistow continues his examination. Does he crystalize his question? No. Does he have the witness instructed? No. Is there even an objection to his next round of

questioning? No. Mr. Wistow had said just before the Prime Minister came back, and I quote, this is on page 63, lines 17 to 20, "You know what I'd rather do? You know what I'd rather do? Let's set this question aside and let's go forward and let's get a whole list of questions to ask the Magistrate at once." Not issues, questions. Mr. Wistow set the question aside. Having set it aside, he's not in a position to now complain to the Court that it was not answered. We should not speculate on what he might have done, or would have done, as to this issue, as to the others, given his own description of his course of questioning as "loosey-goosey". He suggested during the course of the deposition, perhaps in an intentionally self-deprecating way, which is his style, I recognize, I do the same thing, when he suggested he was kind of having to make it up as he went along because he was new to the matter. I understand if he was new to the matter, and I understand if that's sort of the false self-deprecation that we engage in, but under any interpretation of what he did, the witness was not instructed not to answer. And he set the question aside. That's the record. But let me back up and note that as to this whole area, it's a contrived area of inquiry. The defendants have never relied on

private conversations between Palestinian officials and U.S. officials to ask a court to vacate a default. There's a passing reference in a pleading that it was a subject of communication, yes, but we never said because it's a subject of communication you shall vacate a default. The defendants have argued that these cases impact U.S. foreign policy interests, but the defendants have never said that the basis for your conclusion that should be reached in that regard is that it was raised as an issue at some point in conversations or otherwise.

This is sort of a manufactured argument, in any event, for a host of reasons. Given the record, therefore, on that issue, and given the likely agreement the parties have now reached, I'll move on to the other issues raised by the plaintiffs.

Now, as to the declaration of the Prime Minister, let me -- and the 2005 letter. I'm going to talk about them a little bit jointly and then I'll break them apart. What had happened here is that this motion was filed in December 2007 in collateral litigation, in Knox where the case was vacated and there was lengthy, lengthy discovery about the defendants' ability to post a bond. At some Mr. Strachman, who is counsel to the plaintiffs in Knox,

had raised this 2005 letter suggesting that the Prime Minister had not been so pro-active in getting these cases under his control and in a proper position. So when his affidavit is filed in the instant case, it's appended. We did not rely on statements in the 2005 letter to ask a court to vacate default. The purpose of the Prime Minister's declaration in this case was simply to express his commitment to the litigation. That's how it was argued. In the motion to vacate default, we did not argue to the district court that he should grant the vacater because of what was said in the 2005 letter. We argued that he should grant vacater in part because of what was said in the 2007 declaration. If we had not included the 2005 letter, Mr. Strachman would have complained that we were hiding the ball from the Court about the fact that the Prime Minister had some involvement or knowledge of these cases in 2005. It's what happened to us in New York in Knox. So it's heads I win, tails you lose, if you append the letter. The only way the letter was used on appeal, and the portions referenced but not very specifically by plaintiffs' counsel, was as a shorthand way to refer to the collection matters. The cite in the brief says that after the judgment was issued in this case that there was a host of

collection actions engaged, and they cite the Prime Minister's letter. Not as a basis for foreign policy vacater but as a shorthand way of describing the collection actions in their providence. Before this Court and before other Courts, we have not relied on that letter as the basis for a foreign policy conclusion, and we don't rely on it now. Again, this whole issue about that letter and the 2007 declaration is sort of, again, it's a more or less a manufactured issue. I'll tell you why I say that. Mr. Wistow, at the deposition, goes to the Prime Minister and wants to ask a host of questions. The questioning on this 2005 letter lasted so long, an hour, maybe more about this letter, and the various statements. And one of them as to whether his statement about whether U.S. laws were or were not violated by the way that the collections were being done in this case. Now have we ever relied on the Prime Minister's letter to say that there was any problems with the collections in this case? No, of course not. Who would care what the Prime Minister has to say about the United States laws and whether they've been violated in connection with the collections. There's a letter he wrote to the state department trying to get them to do something, but we haven't argued to Judge Lagueux, to you, or to

any other court that you should find that the collection efforts by the plaintiffs in this case are improper because Prime Minister Fayyad says so. But he wants to go in and ask him what is your basis for those statements in the letter about U.S. laws being violated. You can see we've gotten very far afield from the issues that might be in play in January of next year when that inquiry begins. And it engenders an objection because as I indicated, the question -- I want to turn to the precise language of the question. Hopefully I haven't lost it. It's on page 117. I think Mr. Wistow probably said 116, which is the way they print these things. There's four pages on each page. The question itself is, one of those questions that is really probably two questions, and I quote on page 117, line 6: "Okay, now what laws were you referring - what was the basis for your statement that the attempts by plaintiffs' counsel to interfere with the actions of the Palestinian government was not supported by United States law? What knowledge did you have at the time." Okay, so that's three questions. And I object. That's principally the objection upon which they rely. I dare say what question is being asked is not even clear. Our suggestion is that obviously this could implicate, and

I raised that it implicates advice of -- excuse me, privilege, based on conversations with counsel. It goes on and there's additional discussion between Mr. Wistow and I, and it says -- now I'm on page 118, this is Mr. Wistow: "It goes on to say that it ran counter to international law. Did you have any knowledge at the time of what international law was being referred to?" And I object again saying that any knowledge he would have had would have been based on advice of counsel. He goes on, and it continues to be the same framework finding out the basis for legal conclusions in a letter as to what the Prime Minister's knowledge of the law is as to these matters. Again, way far afield in terms of need for discovery in connection with this motion to vacate. How this relates to whether or not there are foreign policy implications in connection with this default judgment, I don't know. How it relates to meritorious defense, I don't know. How it relates to prejudice to the plaintiffs, I don't know. How it relates to anything other than Mr. Wistow eliciting objections to questions about what a lawyer told the Prime Minister that went into a letter in 2005 that we're not relying on. This is truly a manufactured dispute.

In the course of this seven hour deposition

of the Prime Minister, and we were careful, my objections, when he went out of the room, I don't know if you noticed this, Judge, I took the time when we were arguing that diplomatic privilege stuff, I wasn't running out the clock. I said I'll take this time, and I ate that time. So he had his full seven hours. He didn't raise any of these issues with you. He didn't perfect the diplomatic privilege issue. And these others are just manufactured issues that have no relevance to what we're doing here. The notion that we're then going to bring in the Prime Minister to answer more questions on this here, there, or anywhere, is a waste of time. It's not going to help the plaintiffs win. It's not going to help us lose. We would suggest to the Court that the amount of time that's been spent on this motion is more than should have been spent on it. We'd ask you to deny it.

THE COURT: All right. Thank you, Mr. Rochon.

MR. WISTOW: May I have just two moments to reply, your Honor?

THE COURT: All right, Mr. Wistow.

MR. WISTOW: Whether or not, your Honor, there was an instruction not to answer the question, I rely exclusively and totally on page 63 of the

deposition where I say: "Mr. Wistow: All I'm asking is did he ever ask for a statement of interest. Mr. Rochon: I'm not going to let him answer that now on diplomatic grounds." Flat out. Now, we didn't call your Honor right away. I'm not suggesting if -- I didn't want to call the Court that your Honor would hang up on me. What we were saying is there'd been an arrangement, they need a protective order. They need to stop the questioning, not us, to get an order to compel it. So all I was saying is let's hold that question, let's hold all the questions, and call the Magistrate all at once. That's demonstrated by the record in this case completely.

Now, I'm sorry to hear Mr. Rochon say that the communications in that June 5th letter were not relied on in presentation to the Court. That is simply simply not true. I will quote you exactly what was said. Mr. Rochon wants to say that the letter was just -- the finance, the then finance minister's concern about collection matters. Not so. Here is what he said in the letter: "In particular, we believe that the actions of the plaintiffs in the Ungar case directly interfere with the United States Government conduct of foreign relations in the Middle East to the grave detriment of the Palestinian people, et cetera."

To suggest that that letter did not deal with foreign policy implications is simply not true.

Additionally, it's not only the letter, it's the declaration that was put into this court where they said flat out, your Honor, and I quote from docket 408: "Vacatur is also warranted because of the significant foreign policy and consequences that have flowed from the $116 million default judgment entered in this case. As Prime Minister Fayyad's declaration makes clear, this judgment has already been the subject of diplomatic communications at the highest levels between our country's representatives, et cetera, et cetera, et cetera.

Your Honor, I ask you not to tie Judge Lagueux's hands at the hearing, tie our hands. That's all I ask. What needs to be addressed here is this holistic approach that the First Circuit asked for. They're talking about intangible things. I mean, the best interest of the United States which raises all sorts of questions as to whether the Court should involve itself in making that judgment, or whether it's political or not. That's a whole other issue. But I ask your Honor, allow us to explore these. These artificial things that we didn't perfect the record when after we're told flat out we will not

allow an answer, I think is unfair. Thank you, your Honor.

THE COURT: The next two motions are related. We have the defendants' motion for entry of a protective order regarding plaintiffs' request for discovery of certain third-party communications. That's docket number 526. We also have plaintiffs' judgment creditors motion to strike and compel, that's docket 551. These motions relate to the same matter, so I'm going to consider them jointly. Let me just make an inquiry, does anyone need a recess at this point?

VOICE: I would take one if it was offered to me.

THE COURT: Well, I suspect if we don't take a recess we're going to go until 12:30 nonstop, so I'll take a 5 minute recess, all right? The Court will be in recess.

THE CLERK: All rise.

(RECESS)

THE COURT: All right, we will take up motions 526 and 551. Counsel, would you identify yourself again?

MR. HILL: Good morning, your Honor. Brian Hill. It's a pleasure to be appearing before you for

the first time.

THE COURT: Good morning, Mr. Hill.

MR. HILL: Let me return to the big picture that Mr. Rochon started out this morning with, your Honor, and that is that there are a number of different topics on which discovery is being sought by both sides here today.

THE COURT: Excuse me, Mr. Hill.

MR. HILL: Yes, your Honor.

(Pause)

THE COURT: I apparently left my pad on my desk. Would you go get it please. It will just take a moment.

MR. HILL: Certainly.

THE COURT: Yellow legal pad with handwritten notes. If you don't find it come back immediately. Thank you, Mr. Hill. Please proceed.

MR. HILL: Your Honor, with respect to the big picture, there are a number of subject areas that are at issue here today and tomorrow about which the parties are seeking discovery. This one is rather discrete and it has to do with whether we're going to be taking discovery about the inner actions of the defendants with the third parties that are involved in the various enforcement actions that the plaintiffs

have brought, and as you will see over the course of the argument I'm going to suggest to the Court, argue to the Court, that respectfully this is one topic that the Court can and should just take off the table. We've got approximately 25 days left in the discovery period. We've got a lot that we're going to need to do to complete discovery by November the 19th. This area is discrete. It is attenuated from the merits, to say the least, and the particular requests that are before your Honor unquestionably call for protected work product, and for all those reasons we're going to ask the Court to grant a protective order that the discovery not be had with respect to the interrogatory and the document request at issue.

Let me talk about the three reasons that the Court should grant that motion. They are, the material sought is irrelevant, the request itself is facially and tremendously overbroad, and in any event, as I alluded to, the material that is sought is work product, and there's been no showing by the plaintiffs that that protection could be overcome even if it were relevant and were not overbroad.

Let me talk about relevance to start with. The theory of relevance that's being advanced by the plaintiffs with respect to these materials, and those

materials are communications between the defendants and the seven non-parties to this action. And the communications that are sought are those that pertain to this litigation, to the 2004 judgment in this case, and the 2006 creditors' bill judgment in this case. So the materials that are sought on their face pertain to litigation. The requests expressly say they're looking for attorney to attorney communications, which would obviously be work product. I'm not sure that's seriously contested by the plaintiffs. And the theory of relevance is that these communications, the plaintiffs hope, will show some connivance, some cooperation, between the defendants and the non-parties in the collection actions. And it's clear through the briefing, we've now each had two briefs, the plaintiffs are not contending this is relevant just because the defendants haven't paid the judgment. Everybody seems to agree that that's not the issue. Everybody knows we haven't paid the judgment, and that's not a factor that would prohibit the Rule 60(b)(6) relief that we're seeking. The plaintiffs' contention is that these communications will reveal some impropriety or malfeasance or violation of court order by the defendants, and with the exception of one example relating to the Palestinian investment fund,

which I'll talk about in more detail as I proceed with the argument, there's no evidence that there's been any improper communication or cooperation between the defendants and the non-parties. There's nothing at all for the Court to look at and say communications with the pension fund or the Palestine Monetary Authority, or any of these other non-parties would be inappropriate in any fashion for the defendants to be having, and as we said in our opening briefs, it's perfectly understandable that counsel for the defendants would be communicating with counsel for these non-parties over the plaintiffs' attempt to enforce the judgment in this case against those non-parties. And there's nothing wrong with that, and there's no indication from the plaintiffs, with the exception of the PIF that the defendants have done anything improper at all.

Let me also make this point, and those non-parties have repeatedly come to this Court, and come to Judge Lagueux, and asked him to get involved in this issue of whether or not the judgment in this case can properly be enforced against those non-parties, and the district court has repeatedly said he's not going to do that. He said that that issue, whether they're alter egos, whether they're

holding PA, PLO assets, that's got to be decided in the cases where the judgment enforcement actions are pending, and this happened as recently as last month with the Palestinian pension fund which sought to intervene and have the Court clarify its prior injunctive order and whether it applied to the pension fund, and the Court said I'm not in that. I'm not going to do that. That's got to be decided in the other court. Ironically, somewhat, the other courts have now for the most part all stayed their proceedings pending Judge Lagueux's resolution of the motion to vacate on the obvious theory that if the motion to vacate is granted, the collection actions will then be mooted because the judgment will be vacated.

Now what the plaintiffs are asking the Court to do in the context of ruling on the motion to vacate now is to adjudicate the very questions that Judge Lagueux has repeatedly said he does not want to adjudicate in this action which is are these non-parties alter egos of the PA or PLO, or in some way holding PA or PLO assets. So we've sort of gone into a vicious circle now where the collection actions are stayed pending resolution of the motion to vacate. The district court has said repeatedly he's not going

to adjudicate the questions which are being considered in the collection actions, which is, is there an identity between the defendants and these non-parties, and the plaintiffs now want to argue that the motion to vacate should be denied because of an identity between the non-parties and the defendants. I would respectfully suggest that this is not going to be a profitable area of discovery and the Court ought to, for that reason, rule that it's irrelevant given the repeated statements of Judge Lagueux that he does not want to adjudicate those issues, and I wouldn't think that there'd be any reason for him to do it in the pending motion to vacate.

Let me talk a minute about over-breadth. The requests request all communications between the PA and the PLO, and the non-parties related to this action. And as I've just mentioned, there's no indication that there's anything improper going on with the possible exception of the allegations related to the PIF. So if the Court were to order any discovery at all, it has to be significantly narrowed, and this was a bone of contention in the parties' discussions where we had meet and confer discussions about, you know, what is it you're looking for, what is it you're hoping to find. The one example is the same one that's now

before the Court relating to the PIF, and we asked them, will you narrow your requests to just that, and the answer is no. So there's no justification for the broad, overbroad --

THE COURT: Do I take from that comment, Mr. Hill, that had the plaintiffs been willing to narrow the requests to just the Palestine Investment Fund, the defendants would have been agreeable to answering?

MR. HILL: I don't think so for the reasons that I'm going to describe now because I think there's adequate reasons to not allow that discovery, either. But the point I would make overall is if the Court is seeking to allow any discovery into this area at all, it could only be as to the areas where the plaintiffs have articulated some reason to think there'd be something worth finding.

THE COURT: All right, please continue.

MR. HILL: So let me talk about privilege, or more specifically work product. Now, the materials sought on the face of the request pertains to litigation, pertains to this litigation and the two judgments in this case. It is almost of necessity going to be material that's prepared in anticipation of litigation, and for that reason it's work product,

and the majority of the communications that we've been able to identify in our efforts to get our hands around this are attorney to attorney communications, mostly between my firm and the firms that are representing the non-parties in the various collection actions. So we're talking about work product here, and the plaintiffs, I don't think, seriously contend that this material is not work product. There are instead advanced four or five, I'm not sure how many of them are still being pressed, theories of waiver or non-protection. Let me just address those.

The first one is that the Court should order all the material to be produced because we haven't provided a privilege log, and there were some discussions early on between the parties about whether we should log this material, and it became apparent to us as we looked at the volume of the material involved, it's tangential, at best, relevance, and the overbreadth of it that it wasn't going to be a useful exercise of time or resources to create an extensive privilege log for the vast majority of stuff which is not even arguably relevant. So we did what the rules require, which is we objected and we said in accordance with Rule 26(b)(5) that we would provide a privilege log for any material that is "not otherwise

discoverable" which is what the rule allows, and we cited to your Honor the D.C. circuits decision in the Phillip Morris case which very clearly reads the rule and the comment correctly to say that as long as a party is objecting to material on grounds other than privilege, it's not necessary for the party to go through the exercise of creating a privilege log, and here we've lodged objections both to relevance and over-breadth. We don't believe there's been any waiver of the privilege because we have asked the Court to rule on our relevance and over-breadth objections before we are put to the burden of creating a privilege log.

The plaintiffs in their second brief, we both filed two briefs here, cite the Banks case which is a subsequent decision from Magistrate Judge Fasciola in D.C. who is a privilege maven of sorts in the local courts down there, and he makes the point correctly that a lawyer should be wary about not serving a privilege log unless they're going to go to court and ask to be excused from providing a privilege log. Well, that, of course, is exactly what we've done, your Honor. We have moved for a protective order seeking, among other things, that you order that we not be required to go through the exercise of logging

material between my firm and the firms representing the non-parties which are patently work product. It wouldn't be in anybody's interest except to expend time and resources that are better spent on the relevant discovery issues that we need to cover in the next 25 days in this case. So respectfully there's been no waiver from our failure to submit a log. We did exactly what the case law says we're supposed to do. We're asking you to excuse us from that requirement. We've also asked you to excuse us from that requirement because the material that you'd need to know about whether it's privileged is already here. We're talking about communications between lawyers for entities that are not adverse about litigation. That's work product. Because they're not adverse, there's been no waiver of the work product protection. There's no point in producing a log of all these communications when the basis for the work product claim is already before the Court.

Now there's been some argument that with respect to two of the entities there has been a waiver because the PA is, in fact, adverse to them. And the theory here is that they are adverse to them because the PIF has sued them in foreign actions. So there's two points to be made here. First, with respect to

relevance, the plaintiffs relevance theory is that communications with those entities, Becont and Orascom, are relevant because they will show the PA is in collusion with Becont and Orascom to avoid payment of this judgment. That's the relevance theory. This is inconsistent with the work product waiver theory which is that the PA and the PLO are adverse to Becont and Orascom and therefore their communications would be waived because they're adverse to one another. So obviously it can't be both ways. They would be irrelevant if we are adverse to them, or they would be work product if we're not adverse to them.

Very important point to consider here again is PIF. The lawsuits at issue are brought not by the PA but by PIF. In order for the Court to find that the PA is adverse to Becont and Orascom, the Court would have to find that the PA is an alter ego of PIF, and that is precisely the issue that Judge Lagueux has repeatedly said he is not going to decide. That should instead be decided in the enforcement action with which respect to the PIF is pending in Connecticut.

Let me talk a little bit about substantial need. The plaintiffs --

THE COURT: Before you leave that point,

Mr. Hill, didn't Judge Lagueux, in 2006, issue an order awarding to the plaintiffs the interest of the PIF?

MR. HILL: That order is out there, yes, your Honor, and I do intend to address that in detail. I can do that now or I can finish what I had planned to do and then get to that.

THE COURT: As long as you're going to address it, you can continue.

MR. HILL: I will. That's the most complicated piece and I'm saving it for the end for that reason.

THE COURT: All right, please continue.

MR. HILL: On substantial need, the argument appears to be that because the plaintiffs want this information there is a substantial need for it, and it sort of becomes a tautology when the plaintiffs seek to discover attorney work product, and that's all the discovery request is addressed to, there will of necessity be no other way to get it than the attorney's work product, so there's a little bit of a trick here in the argument. But the point to be made is, to the extent the work product involved is mental impressions or strategies of the lawyers which is the only thing that could be relevant, I mean, if it

suggests here's a copy of something we filed, that's not going to be relevant, so the only relevant material that they're claiming to seek are the strategies and mental impressions of the lawyers involved, that is the sort of thing you can't get even if you had a substantial need. That's the sacrosanct stuff that you're not supposed to be able to get under the work product doctrine. So substantial need is not going to get them there, either.

There's an argument that was made in their first brief about standing, in their second brief they seem to have abandoned it, but the theory was that, I think, that because the PA is not a party in the enforcement actions, the communications from the lawyers representing the non-parties wouldn't be work product defensible in this action because they're not "From a party in this case". We pointed out that, well, if that is the argument, then you have to get those seven entities in here to assert their own work product claims. The plaintiffs in their last reply brief said that we could adequately represent that. So I don't think that's currently an issue before your Honor, but maybe the plaintiffs can correct us if that's still an issue out there. But I think we can legitimately say that communications between the PA

and the PLO and the non-parties are protected work product either because it's the PA and the PLO's work product or because it's the non-parties work product that's been shared with a non adverse party.

So, let me talk about the PIF, and this has two aspects that are pertinent here. One is relevance and one is the crime fraud exception. Now let me make this point about the crime fraud exception to the attorney/client privilege with the work product rule.

In order to overcome a privilege, the plaintiffs would have to show two things, they'd have to show a crime or a fraud recognizing that that can be a broad category of material, and they'd have to show that the attorney communications were in furtherance of it, or to conceal it. So let me start with the easy part which is, are the attorney communications in furtherance of the alleged crime or fraud? The alleged crime or fraud here that the plaintiffs have used as an example and this is their only example. Again with respect to the entities other than the PIF, there's nothing in the record to suggest that there's any crime or fraud, any impropriety, any violation of any court order. The example here is the payment of dividends and advances by the PIF to the PA. These happened. They are, as

we said, I think, in our brief, open and notorious. They're available on websites. The plaintiffs attached the documents showing the amounts of these dividends and advances.

And so the first question for the Court with respect to the crime fraud exception is, are there any attorney communications that furthered those payments or dividends. And as far as I'm aware, there are none. So the second prong of the crime fraud exception would not apply to that example.

Now let me answer the question your Honor asked me a few minutes ago which is what about the creditors bill judgment. So the creditors bill judgment was entered by Judge Lagueux in 2006, and it has two aspects to it. I think it has three paragraphs but there are really two aspects, as I see it. First, it purports to convey the PA's ownership interest in the PIF to the plaintiffs in this case. Second, it purports to convey the assets titled in the PIF, or titled to the PIF, I think is the language in the order, to the plaintiffs in this case. There are a host of issues about the enforceability of that creditors bill judgment against the PIF and, frankly, your Honor, as against the defendant, the PA. And let me just annotate them for you here. And these are all

helpfully laid out in Exhibit, I believe it's L, to the plaintiffs first brief which is the brief that the PIF filed in the enforcement action in Connecticut. As the PIF points out, there are personal jurisdiction issues with the enforceability of the creditors bill judgment. At the time the creditors bill judgment was entered, the Court, this Court, did have personal jurisdiction over the PA under its prior decisions in this very matter. The Court has said it did not have any PA or PLO assets before it at the time. The creditors bill judgment nevertheless purports to convey the PA's ownership in the PIF to the plaintiffs. So there's an issue here about whether the Court could convey ownership of an asset that was admittedly not before it. This is, I think, analogous to if the PA owned a house in London, the Court conveying ownership of that house to the plaintiffs, and I think there are obvious personal jurisdiction issues with doing that sort of a thing. That's why judgments have to be domesticated in other places. There were personal jurisdictional issues with respect to the PIF. The creditors bill judgment purports to convey assets that are titled to the PIF to the plaintiffs, but the PIF was not before the Court, and Judge Lagueux has subsequently acknowledged that he

doesn't have, and didn't have, personal jurisdiction over the PIF. So there's a legitimate question about whether that aspect of the order that conveyed the PIF's assets is an enforceable order that could be enforced against the PIF.

There are due process issues with the creditors bill judgment. Judge Lagueux subsequently decided the North Atlantic Distribution case, which I believe Mr. Wistow successfully argued, and he held in that case that it would be a violation of due process to enforce a judgment against a non-party to the judgment unless that party had an opportunity to defend their interests. Well, PIF never had that opportunity in this court. It was never hailed into court here.

THE COURT: Is the case you just cited, that you just referred to, cited in any of your memos? And if not, do you have a citation for it?

MR. HILL: It is, your Honor. And it is 497 F.Sup. 2d 315.

THE COURT: 315?

MR. HILL: 315, yes, your Honor.

THE COURT: Thank you.

MR. HILL: Another due process concern about the creditors bill judgment is that it purports to

convey all of the ownership of the PIF to the plaintiffs, but the PIF was and is worth substantially in excess of the judgment at issue. So an asset has been conveyed that is worth much much more than the amount of the judgment that the PA owes. I believe at the time it was conveyed the PIF was worth approximately $800 million. It was conveyed to satisfy a judgment of the $116 million, plus whatever the prejudgment interest was at that point in time.

In addition to the personal jurisdiction and due process concerns with the creditors bill judgment, there are concerns about -- of the Rhode Island statute and whether it was complied with. As your Honor knows, when you're proceeding under Rule 69, the federal court applies the law of the state in which it sits. The creditors bill judgment purported to be an action under Rhode Island General Statute 9-28-1. There are two prerequisites of that statute that were not followed in connection with the entry of the creditors bill judgment. One, there had to be an attempt of an execution against the PA. That was not done. The Rhode Island Supreme Court has said that that is a prerequisite and it has to be done. It wasn't done in this case. And perhaps even more glaringly, 9-28-1 requires a new action to be brought,

and that wasn't done. Instead, the action was brought in the pending existing action that we're here today on. And when the LeBeuf Lamb firm which represents the PIF brought an action in this court, and made that argument to Judge Lagueux, what Judge Lagueux said was that is an excellent argument but you don't have standing to make it. So Judge Lagueux himself has acknowledged that there is this issue with whether the Rhode Island statute was followed.

THE COURT: Who was that law firm representing when it was here before Judge Lagueux?

MR. HILL: That's a very interesting question. So what happened was, after the creditors bill judgment was entered, an action was brought by the Ungars in Connecticut to try and collect against a PIF asset which is called Canaan, and that is pending before Judge Dorsey in the District of Connecticut, and then a new lawyer appeared on behalf of the defendant PIF. His name is Robert Tolchin. Mr. Tolchin has represented a number of claimants against the PA in other ATA actions, including a couple of the cases Mr. Rochon mentioned to you. He appeared in Connecticut on behalf of the PA representing its new owners, the Ungars. The PIF, I'm sorry, the PIF representing its new owners, the

Ungars. The PIF had, in the meantime, retained LeBeuf Lamb Greene and McCrab, I believe it was called at that time. It's now Dewey LeBeuf (coughing) to represent them in the case in Connecticut. They then sought guidance from the Court in Connecticut about who really was representing the PIF because the Court in Connecticut now had the Ungars' lawyer as the new owners under this Court's order telling them one thing and the PIF, I guess old management or current management, whatever you want to call it, represented by LeBeuf, telling them another thing, and what LeBeuf ended up doing was filing an action here seeking a declaration that the creditors bill judgment was invalid, and what Judge Lagueux said is, I am not going to decide who owns the PIF. That's got to be decided by the Judge in Connecticut, and he dismissed the case saying that LeBeuf didn't have standing to raise that issue here.

One more area of a problematic nature of the creditors bill judgment is federal subject matter jurisdiction. The Supreme Court's decision in the Peacock case, which is also cited in the Exhibit L to the plaintiffs' second brief, very clearly held that there is no ancillary or supplemental federal subject matter jurisdiction to enforce a judgment against a

non-party to the judgment. Now that is what happened here because we have an action here against the PA, PLO, Hamas, and the other individuals that were dismissed, but a creditors bill was brought in this case to enforce the judgment against PIF by conveying, among other things, assets titled to PIF to the plaintiffs. I say all of this because it's obviously very complicated whether or not the PIF has violated an enforceable order against itself.

Let me return the Court to what the PA is alleged to have done here that is allegedly inequitable or unclean hands. What the PA is alleged to have done here is to essentially cash checks that were sent to it by the PIF. Whether or not that was improper is obviously going to involve an inquiry about whether there was a violation of the creditors bill judgment. And let me make this point. No less than the United States Government has made it clear by its conduct since the entry of the creditors bill judgment that the Ungars are not the legitimate owners of the PIF. The United States has continued to do business with the PIF, with its current leadership, which was the predecessor leadership, not the Ungars, notwithstanding the Court's order, and I think there are serious questions about the validity of that

order. That order is the subject of the Connecticut enforcement action which has been stayed pending the ruling on the motion to vacate, and I think with everything that Judge Lagueux has to do, and that frankly the parties have to do between now and November 19th, it's not going to be profitable for us to have extensive discovery on these issues about the PIF, particularly where any responsive material would be work product but for a potential application of the crime fraud exception where there's a serious question about whether the order has been violated, or could be violated, given its extraterritorial effect and all of the issues that I just described for you, and, I think most importantly, where there's no indication that the lawyers and the material that is sought by the request were involved such that the crime fraud exception could apply. So we've got something that is of tangential relevance but is clearly work product, and at least one of the prongs of the crime fraud exception wouldn't apply. For all of those reasons, we would ask you to grant the motion for the protective order, that the material that is sought and the interrogatory and the document request at issue not be had. I'm happy to answer any other questions that the Court may have.

THE COURT: Mr. Hill, the plaintiffs cite the Motorola case --

MR. HILL: Yes.

THE COURT: -- in support of their position, and the Motorola case, or they cite it for the proposition that the post-judgment conduct of a party moving under Rule 60(b) to vacate a judgment is relevant in determining whether or not the motion should be granted. Is that law with which the defendants agree? Is that something that Judge Lagueux should be considering when he rules upon the motion to vacate?

MR. HILL: Well, let me make two points about Motorola. First of all, it's not controlling. Secondly, it's not a 60(b)(6) motion, it's a 60(b)(5) motion, and there the issue was whether the amount of the judgment should be reduced because of certain other payments the plaintiffs had received from non-parties. But absolutely the Second Circuit in that case was quite exercised about what the judgment debtors in the Motorola case had done. And I would suggest when you read it, Judge, it's nothing like what the PA is accused of doing here. What the PA is accused of doing here, with any specificity at all, other than the absolute fishing expedition that the

requests themselves would launch us on, is they are accused of accepting dividends and advances from the PIF under the circumstances where the PIF has operated as a separate entity, is recognized as such by the United States, and there are serious questions about whether or not the creditors bill could have prevented the PIF from doing what the PIF did.

One thing I would suggest your Honor would look at factually on this is the declaration of Mr. Mustafah, who is the head of the PIF, which is Exhibit G, it's either G or 6, I can't read my own writing, to our second brief, where he discusses in detail the way the PIF operates, how it operates independently of the PA, how it makes its own decisions about dividends and advances, and that's the evidence that's in the record.

Now, I hesitate --

THE COURT: Is he the same individual that the plaintiffs contend actually holds a ministerial rank in the --

MR. HILL: Yeah, and that's addressed in his declaration, your Honor. Maybe I should get it out and refer to it more specifically, but (inaudible)

THE COURT: Well, I need to watch the time here, Mr. Hill, because I need to hear from

plaintiffs, so --

THE COURT: Yeah, it is Exhibit 6 to our second brief. He does explain that he holds that rank. That it's a voluntary position. He's not compensated for it. And that his work for the PIF is in his capacity as the chairman of the PIF and not as any sort of PA official, and that's what's in the record.

THE COURT: You suggest that Motorola is distinguishable and not applicable here. In the Motorola case there was reference the Court was displeased with the actions of the movants in initiating litigation in foreign countries that the Court perceived as interfering with the attempts to collect judgment, and the plaintiffs here cite litigation, I guess initiated by the PIF, in Egypt or somewhere internationally, that they contend is the same thing here. Would you respond to that?

MR. HILL: Well, I certainly can, your Honor. And what's going on here is the PIF, again who I don't represent, but they're not a party to this action. They eventually learn that the Court has entered the creditors bill judgment in this case which purports to change their ownership, and they go to courts in Aman, Jordan where they are located and in the West Bank, in

Ramallah, to get a determination about who actually owns them, and those courts have found, for what it is worth, that the PIF continues to be owned by its prior owners and is not owned by the Ungars. Those courts have found what remains, remains sub-justice (inaudible) in Connecticut which is, you know, is this an order that's enforceable against a foreign entity under these circumstances.

THE COURT: And the affidavit that you just referred to that explains the relationship between Mr. Mustafah, I guess, and --

MR. HILL: Yes, your Honor.

THE COURT: And where is that affidavit again?

MR. HILL: Exhibit 6 to our reply brief.

THE COURT: Okay. Thank you, Mr. Hill.

MR. HILL: Thank you, your Honor.

THE COURT: Mr. Wistow.

MR. WISTOW: Thank you, your Honor. If all that was involved here is having the lawyers say on the one hand my clients didn't do anything wrong, and me on the other saying they did, without any subsidiary facts, without any documents, without any discovery, I don't know how your Honor would rule. The statements that all of the letters we're talking

about are from lawyers to other lawyers, that's not what we asked for. We asked for all communications. There may be that some are privileged, maybe not. I'm going to get into the privilege log in a moment, but there's something very dramatic that I think I want to share with the Court. This business about Mustafah, and what is his role. This is a central issue. If your Honor would look at document 570-2 in this case, it's a letter from the president of the PA, Mahmoud Abbas, and the head of the PLO, and he wrote to --

THE COURT: Stop, Mr. Wistow, I need direction in this mass of paper. It's 570-2, but what is 570?

MR. WISTOW: Okay, let me see if I can actually hand it up to your Honor. I, too, am awash in documents. 570 is the reply in further support of plaintiffs' judgment creditors motion to strike and compel.

THE COURT: Okay. I have that document.

MR. WISTOW: Okay. Look at Exhibit B, your Honor.

THE COURT: All right. That's the November 28, 2006 letter?

MR. WISTOW: Yes. And if your Honor will note, it's a letter from the head of the PLO and the

head of the PNA. As your Honor knows, we use the terms PA and PNA interchangeably. Mahmoud Abbas is the president of both the PLO and the PA, as the letterhead indicates.

Now all of this business about Mustafah and what he was doing is belied by this letter. First of all, the letter discusses the PLO and the PA's knowledge, actual knowledge, of Judge Lagueux's September 2006 order, and I direct your Honor to the, it looks like the fourth sentence of the first paragraph. It says on September 19th? Well, actually, there's no reason not to read the entire paragraph. It's not that long a letter. (Pause)

THE COURT: I've read the letter, Mr. Wistow.

MR. WISTOW: So, if your Honor --

THE COURT: That first paragraph, I've read.

MR. WISTOW: Okay. The first paragraph is important because it shows that post the June judgement by Judge Lagueux in this case, I said June, I meant September 2006, that there's full, full actual knowledge, not notice, but actual knowledge of exactly what Judge Lagueux had done. Now who is Mustafah and who is the PIF? The next paragraph tells you flat out, flat out, that the PIF falls under the

supervision of my office. This is not some casual letter. This is to the Secretary of State of the United States. I'd like to come back to this issue about the Mustafah and the PA and the like, but before I do that, I'd like to put this issue into context.

I'm really astonished to hear counsel get up here and say Judge Lagueux's order has the following problems with it, and we don't think it's valid, or there are issues with its validity, and what's the problem, in effect, if we disobey it? When you cut everything away with the jurisdiction here, the Natco case, everything else, what they're saying to your Honor is Judge Lagueux's order is no good, what's the problem if we don't pay attention to it? That's the -- and I'm not here, by the way, your Honor, to argue on the merits of the validity of Judge Lagueux's order. There's an order in place. A judgment in place that must be respected. And if it's not, I think Judge Lagueux is entitled to know that. I think he's entitled to know that after they said that they will respect the orders of the United States courts, that they are, in effect, saying we'll respect the orders of the United States courts if we think they're right.

Now, the burden is on the defendants,

vis-a-vie, the protective order, to show good cause. What they've managed to do is argue in generalities about these documents and what they contain, and if not, all you'd have to do, nobody could ever get discovery. Lawyers would come into court and they'd just say it's irrelevant, it's got nothing to do with anything, there's a lot of lawyers letters, they're privileged. And how would the court ever rule on this? The bottom line here, your Honor, is there's no issue, none, that Judge Lagueux intended to transfer ownership of the PIF to the plaintiffs. Did he have the right to do it? Was it valid? That's not for us to say. They could have taken -- somebody could have taken an appeal. Somebody could have done something. They're not allowed under our system of law to just say the Judge is wrong, we don't care, we're not going to pay attention. What did Judge Lagueux think this was all about? He said, and this appears, your Honor, I'm going to quote -- by the way, I believe the law in the United States is that if there is an order in a case, and you disobey it, and there's an issue of contempt, you don't get to argue about the validity. I think maybe there's some exception for First Amendment and the press, maybe, but generally speaking, when you violate a court order, you don't

get to come walking in and say, Judge, let's have a discussion now about the validity of this thing. What did Judge Lagueux say about what he intended? These are his words. They appear in a transcript of September of '07. It's Exhibit E, document 552. Document 552 is our original memorandum in support of the objection to the motion for protective order. And what Exhibit E says, and I'll read you exactly, these are Judge Lagueux's words: "The Court has entered judgment in the petition to reach and apply the assets of the Palestinian Authority in the Palestine Investment Fund, and the Palestinian Authority defaulted, and the Court entered judgment and transferred to the plaintiffs all interests of the Palestinian Authority in that fund, that separate corporation."

THE COURT: Excuse me, Mr. Wistow, I've got Exhibit E which are pages 13 and 14 of a transcript. Which page are you on?

MR. WISTOW: Okay, bear with me, your Honor. Page 13.

THE COURT: Can you direct me to which line you're reading from?

MR. WISTOW: I will. I'm working -- Mr. Strachman is feeding me clues. I'd be better off

if I found it myself. So hang on just one second. On page 13, your Honor, about the middle of the page. Where it says, since that time the Court has entered judgment.

THE COURT: I have it. All right.

MR. WISTOW: There's no sense my reading it out loud. I would just ask your Honor to read that paragraph and the next paragraph, and when your Honor has concluded with that, I'd be happy to go forward.

THE COURT: I've read the paragraph, Mr. Wistow.

MR. WISTOW: So not only does Judge Lagueux explain what is self-evident, what he intended to do, but here's what's really in my mind very important. On the very next page, on page 14, Judge Lagueux shows that he knows what the plaintiffs have done. It's the first full paragraph the plaintiffs have demonstrated, if your Honor would read that paragraph. (Pause)

THE COURT: Mr. Wistow, even though I can read it, my copy is extremely faint, so I'm going to ask you to actually read it.

MR. WISTOW: Fair enough, your Honor. "The plaintiffs have demonstrated that they have exercised their ownership interest, their stock ownership interest in the fund by ousting directors and

officers, and electing representatives among themselves, to be directors and to run the corporation, and fired the prior counsel LeBeuf and hired new counsel. And new counsel based on the documents that have been presented here have indicated they have no objection to this motion.

Now, I respect counsel's arguments, and their right to make arguments about whether it's valid or it's not valid, but not in this forum, not in this manner, not in this method. This is contemptuous of the judgments of this Court, and I believe something that Judge Lagueux is entitled to consider from people who come in here essentially, essentially, as supplicants saying, Judge, this is -- and, by the way, whether it be 60(b)(5), 60(b)(6), 60(b)(1), (2), (3), (4), all of the 60(b) motions are, in effect, petitions in equity where the litigant comes in and says, relieve me of this judgment. That's what the case law is, equitable considerations. Now equitable considerations are something that would vary from Judge to Judge, what he'd want to hear, what not, and I ask your Honor not to deprive Judge Lagueux of the necessary information about what has been happening here post-judgment and how his judgments have been disregarded. And, I think, again, your Honor, it's

especially important because the constant promise, we will honor, we've learned our lesson, we've turned over a new leaf, we will be good guys, and we will respect the decisions of the Court. We will not be recalcitrant in the future. Well, they have been recalcitrant post-judgment. Post motion to vacate the judgment. Post motion to vacate. For example, they've withdrawn, and we lay this out in our brief, they withdrew $27 million in October and November of 2006. That's Exhibit H to the document we're talking about. In 2007, they withdrew $78 million; in 2008, $52 million, and in 2010 they estimate they're going to withdraw another $55 million.

We've also demonstrated that after this judgment was entered transferring the assets, there was an attempt to modify the Articles of Association after the corporation, the shares had been transferred to us. By the way, who is Mohammad Mustafah? He was appointed chairman in January 1st of 2009, and he was the CEO prior to that at all relevant times. The official website of the PIF says that he's economic advisor the President of the PA with a ministerial level ranking, and the issues that -- I'm at a loss. I can't show your Honor, I cannot, that these defendants have done anything inappropriate with the

other named third parties at this point. I can't. And if I just came in here saying let's -- give me an opportunity to explore and go fishing, well, first of all, I wouldn't do that. And, second of all, I wouldn't be surprised if your Honor said no. But we've made more than a prima facie case. I think we've made an overwhelming case that at least with respect to these investment vehicles, the PIF, that there is something that Judge Lagueux needs to hear. What he's going to do with it at the end of the day, that's up to him. Whether he wants to say, you know, my judgment's no good, I don't blame them for doing this, or whether he says my judgment is good, which I suspect he will because I think the judgment is good, for various reasons. By the way, I don't want to get into a whole litigation on this issue about whether the PIF had to be in the case or not. There's a myriad of cases, myriad of cases, and we cite them at length in our brief on page 7, I believe, where the transfer of the stock ownership of a corporation requires only jurisdiction over the shareholders and not over the corporation. The corporation is technically unaffected by the change in ownership, technically. And under that theory, the judgment is perfectly valid. I --

THE COURT: What about, Mr. Wistow, the point that the assets of the fund are $800 million, or were at the time, the amount of the judgment is $116 million, and the literal language of apparently of Judge Lagueux's order was, in effect, transferred not just the interest of the defendants to the plaintiffs but transferred the entire assets of the PIF to the plaintiffs, more than the amount of judgment. Do you want to say anything about that point made by Mr. Hill?

MR. WISTOW: I don't have any choice since you bring the subject up and you asked a legitimate question. Here's what I would have done if I were the PA, assuming those facts are right, you know, one thing we shouldn't be having here, your Honor, is a trial about these facts. You know, he says it's $800 million. I'll accept that hypothetically. But I don't think your Honor should just accept it as a matter of fact. Let's accept it hypothetically. The PA, which has been involved now with motions and all that, why doesn't the PA come into the court and say, your Honor, look at this. This thing is worth 800 million bucks, the most we owe is the 116 plus interest, which today is about, I think 130 altogether, or something like that. All we owe is

130. Why don't you cut the -- transfer the asset of the shareholders down to some other number, maybe 200 million, if it's 800. Why didn't they do that? And in fairness, your Honor, why are we, you and I, evaluating the validity of Judge -- that's Judge Lagueux's order. That's what he did. They defaulted. They don't want any participation. They've been before this Court now working on three years since the motion to vacate where they're supposedly on top of all these things. So instead of doing what they're doing, just come in and say, Judge, here's a problem. That's my answer, your Honor. I don't know if it's satisfactory or not.

THE COURT: All right.

MR. WISTOW: Now the bottom line is, your Honor, I don't dispute the fact that defendants on occasion can come in and get a protective order before having to put a privilege log in. That concept is not unknown to me. What is unknown to me, and I don't think there's case law supporting it, is that they can answer the interrogatories, respond to the request for production, and then after the time has gone by for compliance, then file a motion for protective order. That's hugely different. The documents in question were served on June 30th. The responses were on

August 2nd, and not only was there no motion for protective order, there was actually an offer to put in a privilege log that was made to me and to Mr. Strachman. And by the way, that offer for the privilege log, I -- was made at a time when I was saying, you know, you've waived your objections. You should have put a privilege log in. And they said, and we've attached the correspondence as an exhibit, we said, all right, and we did it really ex gratia, but we are trying to move this thing along, believe it or not. Go ahead, put the privilege log in, and then as they said they changed their mind after the fact. They don't want to do it.

Now, the objections that they now make to the discovery, your Honor, take a look at them, they're absolutely, absolutely, boilerplate. They're repeated over, and over, and over, pleadings. They're overly broad and burdensome. They don't tell your Honor, they don't say, you know, we looked and it appears that there are 20,000 documents or 6 documents. They don't say anything. It's just their categorization that it's overly broad and burdensome. Now, if that carries the day, I'm going to adopt that process myself in the future. It's very easy for a lawyer to say it's overly broad and burdensome without any

specificity. Then they argue it's vague and ambiguous, when we say it's relating to the instant case, the judgment, the original judgment in 2004, and the 2006, and then they say, and I'm talking about the actual objections they filed. And when I say boilerplate, I think this proves it. They say that answering it requires legal conclusions on their part in order to determine what is the meaning of officers, employees, attorneys, and agents, unquote. That's legal conclusions. And by the way, we were not limiting the request to correspondence with discussions with lawyers. Then they say that the information is not known or knowable. Again, your Honor, I'm talking about what they actually filed with the Court. Now if the information is not known or knowable, your Honor knows all they have to say is we don't have this information, and that's the end of that. Then they argue that it's irrelevant in this case, and we went to use it in other cases. Your Honor, it is not irrelevant. I think I've demonstrated as best I can. If I could prove that they did what I'm saying they did in the PIF case, I wouldn't ask for the discovery, but I think I've made a prima facie showing that these people did do something wrong and we're entitled. The work product,

common interest and other privileges, there's just been a rank, a rank representation to the Court that what, that everyone of these documents is even from lawyers, is there nothing else? And, your Honor, your Honor knows the case, Consortio Del Prosciutto, the San Daniele vs Daniele. It's a pleasure to say the name of the case. It's getting to lunchtime. Where your Honor has said, you know, you want to raise the privilege, you've got to put a privilege log in, not just get up and make a speech saying this is all privileged. Now we all look at each other and say where do we go from here. Now what's really different about this case, your Honor, is they expressly said in their formal responses that they would provide the privilege log, and I refer you to their answers in document 552-23. I'll read you what they said. "To the extent that any of the requests seek the disclosure of information or documents protected from disclosure by any applicable privilege, including but not limited to the attorney/client privilege, the work product doctrine, the joint defense privilege, the common interest doctrine, state secrets, derivative process, or other statutory or common law privileges, defendants object to such a request and will identify the information or documents in the manner and to the

extent required by the Federal Rules of Civil Procedure and the local rules of this court. That's buried in several pages of boilerplate. I'm not sure they were aware they even said it.

We've cited the cases and they're all over the United States. You can't just put in boilerplate objections in this and then expect that after you put in inadequate objections, then after the fact you file a late motion for protective order.

Your Honor please, I do not expect, and I'm ready to say right now and bind the plaintiffs, we are not going to ask Judge Lagueux for a determination of who owns what. They're right. These matters are pending in front of other courts. We're only going to ask Judge Lagueux to determine that these defendants violated his orders. If the orders are invalid for whatever reason, or if the property -- that is not something we're going to get into in front of the Court. We're just going to say, Judge, here's your order, here's what they did, please consider that.

I just want to read you -- again, I don't want to overstay my welcome, but this is fundamental to what Judge Lagueux, I believe, sees as the case. Mr. Matthew Medeiros was in here arguing on very similar arguments about the invalidity of the order,

and this is at -- I just want to read you briefly the exchange between Mr. Medeiros and Judge Lagueux. This is at document 570-1. Mr. Medeiros: The reason why the second grievous noncompliant with the Rhode Island statute is important, it's not a mere technicality. If plaintiffs, if the Ungars had complied as they were required to do with 9-28-1, instituting a newer reach and apply statute, they would have been obligated to name the PIF as a defendant in that action. The arguments that we've heard today, Mr. Medeiros is saying it. The Court: They do not, they did not have the requirement of naming the PIF. The PIF had no interest, had no interest in that proceeding. Mr. Medeiros: It absolutely did, your Honor. You have to admire Mr. Medeiros' courage. The Court: No, it did not. Mr. Medeiros: It was the entity whose assets the Ungars -- The Court: No. Mr. Medeiros: -- are trying to get their hands on to satisfy the judgment. The Court: No, no, no. What the Ungars were trying to get hold of was the assets, the ownership interest of the PA and the PA defaulted. The PIF was not an indispensable party even -- or even a required party in that creditors bill. Is that right? Is that wrong? What the Judge said? I think it's right. Does it matter? By the way, we own the PIF, according

to Judge Lagueux. For goodness sakes, can we at least get the correspondence with our own company? That was not addressed. It seems to me an absolute minimum where Judge Lagueux said we own that company.

THE COURT: You have about 3 minutes, Mr. Wistow.

MR. WISTOW: Okay. Well, this time I don't need the remaining time. I just -- all I want to say is that whether or not these defendants comply with American norms, legal norms, as they promised to do, is of enormous significance. Your Honor is right, they've done stuff, ala the Motorola case. They've brought suits against the plaintiffs in Syria, in the West Bank, and in Egypt, all with the purpose of invalidating these things, almost in an exact analogy. In any event, I don't think I need case law to support the proposition that this is an equitable proceeding and somebody who's in equity asking for relief, as in effect a supplicant, needs to, and is susceptible to an argument that they're there without clean hands. Thank you, your Honor.

THE COURT: Mr. Wistow, the defendants say that the issue that they haven't paid the judgment, they don't dispute that fact.

MR. WISTOW: And we don't argue. That's not

part -- that's not my complaint.

THE COURT: And so when you say that the defendants have done something wrong with respect to the PIF --

MR. WISTOW: Yes.

THE COURT: Identify for me again what is it that these defendants have done wrong with respect to the PIF?

MR. WISTOW: Your Honor will recall I read where the president of the PO (sic), and the president of POL (sic), describe the PIF as under the supervision of his office. That's evidence in this case. So he caused -- he knowing, knowing that the assets belonged to the Ungars under Judge Lagueux's order, which he told, he expressly discussed all of this. He told Condoleezza Rice, Judge Lagueux did this thing. The PIF is under my supervision, and after doing that, he had the PIF and allowed the PIF to take money and to give it to the PA.

THE COURT: Which then did not pay the judgment with the funds.

MR. WISTOW: I'm sorry?

THE COURT: Which then did not pay the judgment.

MR. WISTOW: Yes, that's right. Not only

that, but depleted, depleted the assets of the corporation which Judge Lagueux gave to these people, to the plaintiffs, again rightly or wrongly, it doesn't matter. The PA and the PLO on the judgment of Judge Lagueux had no right to do what they did, based on the judgment. I'm not complaining that over the years they haven't paid the judgment. What I'm complaining about is their interference with Judge Lagueux's judgment from 2006.

THE COURT: And they interfered again by doing what?

MR. WISTOW: By taking money from a corporation that belonged to the Ungars. The Ungars owned the PIF flat out. That's what Judge Lagueux said. When I read you what he said, he said not only did they own it, Judge Lagueux recognized that they exercised their ownership prerogative and fired the directors and officers, fired them, and also, by the way, Abbas told Condoleezza Rice the same thing, and they said but that doesn't count. We're not going to pay attention to that.

THE COURT: All right, thank you, Mr. Wistow.

MR. HILL: Would you like to hear from me briefly, your Honor?

THE COURT: Very briefly, Mr. Hill. I'll

give you a maximum of 5 minutes.

MR. HILL: I hope to not take it all. Let me begin with the point that Mr. Wistow ended with, which is what the PA is alleged to have done wrong is caused the PIF to pay the PA money. The issue then is, is the PA PIF or is the PA in control of PIF, or is it an alter ego. That is precisely the issue that is being litigated in Connecticut and the analogue of which, with respect to the PMA and the pension fund, Judge Lagueux's repeatedly said he doesn't want litigated here. So the factual predicate for the alleged wrongdoing of the PA, and it's only the PA, the PLO is not involved in this motion at all, really, is that the PIF is part of the PA or an alter ego of the PA, and that's the very factual issue that Judge Lagueux said he doesn't want to have adjudicated here.

THE COURT: What about his original order in which he, in effect, awarded the defendants' interest in the PIF to the plaintiffs?

MR. HILL: That's what the order literally says, and Mr. Wistow took us to task for not moving to vacate it. Perhaps in hindsight we should have. That occurred to me on the plane on the way up here. I mean, it would be sort of unnecessary to do it if the pending motion to vacate is granted because the

underlying judgment will disappear, but, I mean, that order is out there. It was entered in a default posture similar to the underlying order that we're now asking to have vacated, and there are all of these issues about its validity that I alluded to earlier. And it's an issue that Judge Lagueux said he doesn't want to adjudicate here. He has entered his order. It says what it says, but the question that's now being pressed on him in the context of the pending motion to vacate is should the PA be denied the motion to vacate on the underlying judgment because it allegedly violated the subsequent judgment which is being litigated in another federal court, the validity of which is being litigated in another federal court and which Judge Lagueux said he doesn't want to have litigated here, and this is why Motorola doesn't apply. In Motorola the conduct that was at issue was the conduct of the judgment debtor. Here there's a question about whether the conduct the plaintiffs are complaining about is the conduct of the judgment debtor, the PA, or an independent organization, the PIF, and Judge Lagueux said he doesn't want to resolve that issue here.

Just a couple other quick points. The question is not whether Judge Lagueux will be able to

hear about the withdrawals or, as the plaintiffs characterized them, or the, as the documents call them, the dividends or the advances that the PIF paid. Those are a matter of public knowledge. He can certainly be told that the dividends were paid. The issue is whether the plaintiffs are going to get discovery of work product about this case, and about the enforcement action. And as I said earlier, there's no indication that the lawyers, whose documents are at issue here, are related to those decisions to pay those advances or dividends. So we're talking about one thing, which is why were the dividends and advances made, and there is a separate discovery request pending for that, but here the discovery request that's before you is not about that. It's much broader. It's about anything related to the case. About a whole host of other entities, and I think Mr. Wistow has essentially conceded that the PIF is the only issue. So at the very least, we shouldn't be talking about anything other than the PIF, or at least there wasn't an argument that they had evidence that there had been any wrongdoing with anything other than the PIF.

And with respect to the $800 million issue, I'll just note that was -- the value of the PIF at the

time was the attachment that the plaintiffs had to their motion, so they were the ones who said it was worth $800 million at the time.

On the issue about whether we should have moved sooner or back and forth about the privilege log, I mean, we made the decision to move because it appears to us that there are over 3000 potentially responsive documents to this overbroad request. It just doesn't make sense to have to log them all, particularly whereas we've now heard that there's really only a potential relevance as to a very small issue, which may not even be within the scope of the request.

THE COURT: What do you say about the argument that you moved untimely, that you answered and then you moved for a protective order?

MR. HILL: Well, we filed our responses as required by the rules within 30 days. We had an extensive meet and confer. I think we had two or three different phone calls, or we talked about this trying to work it out, and it finally became apparent that we weren't going to be able to work it out, and in the meantime we figured out what the scope of the material involved was and we promptly moved for the order that we're now requesting your Honor to enter.

THE COURT: All right. I'll see you at 2 o'clock, Counsel.

MR. HILL: Thank you, your Honor.

THE CLERK: All rise.

(RECESS)

THE COURT: This is a resumption of a hearing on discovery motions in the matter of the Estate of Yaron Ungar vs the Palestinian Authority, Civil Action No. 00-105 L. We're now going to take up the defendants, the Palestine Liberation Organization's motion for entry of a protective order regarding plaintiffs' notice of taking the deposition of Hamid Qurei, document number 528. Mr. Rochon.

MR. ROCHON: Thank you, your Honor. I think I'll be relatively brief on this. You never know for sure, but it would seem the record on this is that the plaintiffs have no actual stated basis to believe this witness has any knowledge about this case in terms of the relevant, the issues they claim are relevant, that is, though he was the Prime Minister during a certain period of time, the Court has before it the declaration submitted in this case before Mr. Qurei was ever an issue. It indicates that the authority for the handling of these cases was not given to the Prime Minister's office until after Mr. Qurei had left

that office. And the plaintiffs have not offered in their opposition to our motion anything specific to suggest he did have responsibility for these cases, or knowledge about the decisions that were made regarding them. And we have said, if they want to make something out of that, that it's a bad thing that the Prime Minister did not have such responsibilities at the time, they're free to do so. But the fact is that for a deposition of this witness to be conducted in this context, particularly a senior individual in terms of his age, and a person who is being sought by the plaintiffs as a supposed officer of the PLO now, that's why they argue he's producible, he's supposedly an officer of the PLO. We contest that. But they don't want to ask him about anything to do with his current duties with the PLO, which relate to the Jerusalem Affairs Department, and he serves on the executive committee of the PLO. They want to ask him about his duties when he's with the PA. So we have a situation, your Honor, where they seek him as an officer of the PLO to ask him about issues at a time when his supposed knowledge came as the Prime Minister of the Palestinian Authority. Moreover, you have before you the representations consistent with the declaration that the Prime Minister's office wasn't

given responsibility for these cases until after he left the office, and that they were handled through the President's office until that time. Unrebutted declaration. Not even submitted in an effort to thwart the deposition, but submitted in this case almost 2 and a half years ago, or more than 2 and a half years ago, so I would suggest to the Court that one way to cut through this, of course, is why go through the exercise of the deposition in light of that. There's a host of other legal issues associated with the deposition that we've raised in our papers. I'm happy to get to them. But I'm trying to find pragmatic ways to get through some of the discovery issues that have been put in front of you in connection with this matter, your Honor, and that's one extremely pragmatic matter.

Another fact is that the plaintiffs have submitted 30(b)(6) notices that go to a host of issues. We're going to talk about them tomorrow. And, indeed, this morning, when we got here, we received two more 30(b)(6) notices for the Palestinian Authority and the PLO, which I'd like to tender to the Court because it can be relevant to tomorrow's hearing, if I may tender them. They're obviously notes of counsel. May I approach, your Honor?

THE COURT: You may.

MR. ROCHON: Thank you, your Honor. The fact is we have argued in response to this motion and to tomorrow's motions that the issues of timing and willfulness are not actually proper areas for discovery in this matter. We've argued that timing is a threshold matter, and willfulness is a conceded matter. We think those are strong arguments. In any event, however the Court comes down on those, the fact that they're now dominating the discovery in this case is turning this entire discovery process upside down. We have a situation where the defendants have stood before Judge Lagueux, both in papers and in person, and the First Circuit, and said willfulness is conceded. And yet the entirety, not the entirety, but huge swats of the discovery sought by the plaintiffs go to willfulness. And other huge swats go to why did you file your motion in December 2007 instead of sometime between July 2004 and then.

THE COURT: Well, let me stop you at that point. Your position is that the issue of willfulness, that the defendants deliberately defaulted, is not an issue as relevant -- not an issue that requires any discovery because you've conceded that.

MR. ROCHON: Yes.

THE COURT: Yet Judge Lagueux's April 1, 2010 order states that the Court will hold an evidentiary hearing to determine precisely what the facts are concerning the deliberate decision to default, and the factual circumstances surrounding that matter. Why do you think Judge Lagueux put that in his order --

MR. ROCHON: Well --

THE COURT: If it's not an issue that needs to be addressed at the hearing? If it's a fact that you've conceded, then that factor is to be weighed against you, heavily, according to the applicable law, why does Judge Lagueux have this language?

MR. ROCHON: Well, I can think of several reasons. First of all, when he issued the order, I don't know if he was focusing on the fact that the concession of willfulness was going to continue. Maybe he thought the defendants would raise some new issues. On its face, the order references only willfulness, your Honor, as a factor, and as we know, that's something the plaintiffs had urged on them before, and it got Judge Lagueux reversed in the Court of Appeals, and I can tell the Court that a focus solely on willfulness cannot be what ought to occur here on the face of the order. I think everyone

agrees there are issues other than willfulness that ought to have discovery, so I don't know that we should read over much into the wording of that order. But let me take your point instead of arguing with it. And not to say the Court makes points, but take the thrust of your question. Even if willfulness plays some role at that hearing, if you look at the 30(b)(6) notices, and we've attached and referenced the request for documents, which numbered in the 230s, you can see that the plaintiffs discovery in this case is all focusing on this issue of willfulness, which is conceded in this compressed timeframe. And what I'm suggesting to the Court is that they are certainly going way too far with this discovery thrust, and the occupation of all these issues in our limited time available to us. And without deciding whether some discovery is relevant as to willfulness, the notion that plaintiffs can just pluck a former Prime Minister, as to whom they have no reason to believe he has any information about willfulness, and say we ought to have a deposition of him to see whether he knows something about it, and if he doesn't, ask him why he doesn't know something about it, I would suggest is not a proper use of that deposition process even if some discovery as to willfulness is

appropriate. Tomorrow we have other issues on the 30(b)(6), and if the Court orders that there be some discovery as to willfulness, we'll argue to the Court that it should be constrained to a reasonable level, and not get so out of hand, as we will discuss tomorrow.

As to this witness, and this issue, on willfulness, I would suggest the plaintiffs have a problem that's far bigger than whether there should be discovery on willfulness. And the problem is that on their notion, they can pluck people out of the Government, as to whom they have no reason to believe they have notice, and say, let's have a deposition of this man. Now they say because he was the Prime Minister, this is what they argued, and the next Prime Minister had knowledge about this, that therefore he must have had knowledge about this. But that is rebutted by the declaration that has been submitted to the Court unrebutted that authority wasn't given to the Prime Minister until 2007. That's -- and remember, they've had a deposition of the Prime Minister already on these issues. It's not as if at the deposition of the Prime Minister I was telling him don't answer questions about willfulness and instructing him not to answer. You have the entire

transcript before you. A discussion on willfulness goes on and on, even though the Prime Minister wasn't around at that time of the decision to default in a significant way. He'd been the finance minister at one point during the relevant time period but not the Prime Minister, but they got their questions, and we didn't instruct him not to answer. But the idea is having had that Prime Minister deposed and going through those issues to then say we now need to bring in this other person and have him deposed is, I would suggest to the Court, it takes fishing expedition to a whole new level. And they've admitted in their papers, they don't have a fact, they don't have him ever saying, in any of his public statements, any role or involvement, or knowledge of these cases. He was deposed in another matter. They don't say there was any evidence in connection with that deposition conducted by brother counsel who also represents the Ungars in other cases. They don't say he had any knowledge that was revealed in that deposition about the decision to default or willfulness or timeliness. So they offer nothing except the desire to depose him. On that record, I would suggest, that even if you allow some discovery on willfulness and timeliness, it's not through this person. And if you want to cut

through the issues, let's suppose tomorrow I come before you and I argue that there should be nothing on willfulness or timeliness in this discovery, you will either agree with me, in which case this is a moot point, or you will disagree with me, in which case there will be a 30(b)(6) deposition that goes into those issues somewhat. That's the way for them to get to it, not by picking random witnesses and saying let's have a deposition.

So I think your Honor's questions do go to the heart of the matter, but they don't lead to the conclusion that Mr. Qurei should be deposed on those issues absent a basis for it. And, your Honor, I hate to be so pragmatic, but I think that's -- we're going to have argument tomorrow. It will go one of two ways, and then at the end of that argument they will either be getting a 30(b)(6) on timeliness and willfulness, with a witness who needs to be prepared on those issues. You can direct that the person speak to Mr. Qurei in preparation, if you want, but the idea that so that person can come in and say I spoke to him, he knows nothing, just like we all know he knows nothing, it's just -- this process is extremely, I would suggest, an inappropriate way to get about it.

THE COURT: When you say we all know he knows

nothing, is there any declaration or affidavit from him in the record stating I don't have this information?

MR. ROCHON: No, your Honor. Our problem is, if we submit a declaration, they say now we want to depose him based on his declaration, we get to challenge it, so we're always in a -- that's been the course of other litigation with brother counsel. But I can tell the Court that you have, what I think is even more persuasive, which is a declaration from someone with actual knowledge as to how the cases were managed, submitted before an effort to depose this witness was ever sought, so there wasn't even a focus or concern. First of all, it doesn't describe him having any responsibility personally. It doesn't describe his position as having any responsibility, and describes the office which did have responsibility, which was the president's office, not the Prime Minister's office. So I think what you have is not a self-interested declaration to avoid a deposition, which the plaintiffs would question, but instead a declaration submitted at a time at which this issue had not surfaced and the notion of taking discovery in this case was certainly far off. And I think that's even more persuasive than a self-serving

declaration today. And the plaintiffs' opportunity to take discovery on these issues is not going to end with Mr. Qurei, in any event. They want to have 30(b)(6)'s, they want to have paper discovery, they've sought all these different means, they've asked the Prime Minister about it. It has become the tail chasing the dog of the issues here, on an issue that's conceded.

In addition to all of those arguments, your Honor, we have described to you why he is not, in fact, an officer of the PLO now, remembering that they seek him as an officer of the PLO, but to ask him about PA matters. His role with the PLO now is with the Jerusalem Affairs Department where he does not have the kind of decision-making authority that would have him deemed an officer, and his position on the PLO executive committee, which may sound lofty, has 18 members, and again doesn't have final decision-making on behalf of the PLO. He does not stand as an officer, as that term is understood. The plaintiffs have suggested that the decision of a Magistrate Judge in another court in Florida is collateral estoppel as to our ability to challenge -- collaterally estops me from making this argument. I will tell the Court, I don't think the doctrine of collateral estoppel would

reach that decision for numerous reasons. The judgment there, recently the case was dismissed with prejudice, but the plaintiffs indicated there's going to be an appeal, and have told us that, and again I could call on brother counsel that attorney's work closely here with Mr. Strachman, and the attorney has represented to us and to the Court down there that he will appeal. In any event, the issue that was decided, whether or not Mr. Qurei was an officer, was not one that was essential to the dismissal with prejudice particularly since he eventually was deposed, in fact, in that case. And the objections to his being deemed an officer were never decided by the district court. They're essentially mooted out because the deposition eventually occurred. It frankly showed that he had very little knowledge about that case.

So I would suggest to the Court he's not an officer. We've argued, as well, he's not producible, even if he were to be deemed an officer, relying on a fairly well-reasoned case, Stone, which we cited to the Court in our papers, that says he's not producible as an officer. And for all those reasons, Judge, the record suggests he has no relevant knowledge, that he's not producible as an officer, that he's not, in

fact, an officer, and there's far more reasonable means to get to what the plaintiffs want through the 30(b)(6)'s if you allow willful discovery to go forward. I suggest for all those reasons that this deposition, our motion for protective order ought to be granted.

THE COURT: Do I recall reading in your papers that you say that if I were inclined to allow the deposition it should take place in Jerusalem, and I should -- I'm not sure you said I should do this, but a special master or a magistrate judge should go and preside over the deposition?

MR. ROCHON: Yes, your Honor. We have argued that in -- I could argue those points.

THE COURT: Who would pay for this master?

MR. ROCHON: We could talk about with the plaintiffs how that would be funded. We think it's an important issue such that if it were to be ordered, we would have to work that out with the plaintiffs, your Honor, but I don't respectfully think we should get there for the reasons we have indicated, as to this witness, when we have no basis to believe he has knowledge.

THE COURT: I understand that is only if I reach the point that the deposition should take place.

You make that very clear in your memorandum.

MR. ROCHON: Yes, sir.

THE COURT: Anything else, Mr. Rochon?

MR. ROCHON: No, sir.

THE COURT: All right. Mr. Wistow.

MR. WISTOW: I don't think I should presume to explain Judge Lagueux's reasoning for the language that he placed in the order. I have some possible explanations but I can't speak for what Judge Lagueux -- I would add, by the way, in spite of what my brother suggested that he focused only on the deliberate decision in that order, he went on to say in the very next sentence, the defendants will have the burden of proving the variety of factors set forth by the Court of Appeals which would justify a vacation of the judgment under these circumstances, including exceptional circumstances. I mean, Judge Lagueux was very much aware of what the First Circuit ordered him to do, so he was not in any way, shape or form going to limit it to the facts concerning the deliberate decision. Here's my belief, your Honor, of why he said he wants to look into that, and that's because the defendants have been all over the place in explaining why they defaulted, and I'm going to quote verbatim some of the varieties that they've used to

try to take the curse off of the willful default. For example, on page 31 to page 32 of the motion to vacate filed December 28, '07, now pending before the Court, and which will be heard in an evidentiary hearing in January, here's what the defendants say: "The defendants mindset throughout the course of this litigation will be another important factor for this Court to consider in determining whether extraordinary circumstances exist sufficient to warrant vacatur. At the time of the default in this case, defendants were understandably perplexed about the ability of the United States courts to hail them into court. From defendants' view, it seemed illogical that American courts could properly adjudicate claims arising from a longstanding and ongoing foreign conflict. That is language that is pending now before the Court in the motion.

They also put in a declaration that sought to take some of the curse off of this issue of willfulness, and I read you from the declaration which my brother referred to as the one that supports that Qurei has very limited knowledge, Qurei being the proposed deponent here. That's in docket 408-5, and here's what the defendants' witness said about the problems with the case. This, too, your Honor, is

pending, this is part of the motions before the Court. Mr. Abdul Rahman said in late 2000, however, violence broke out in the region and Israeli defense forces began to engage in bombing raids and other actions against the main elements of the Palestinian government. Without regard to the basis for the Israeli raids and actions, the inescapable fact is that as a result of them by January 2002, the security situation in the occupied Palestinian territories approached lawlessness and anarchy, and the organizational structure of the entire government had deteriorated significantly. An upshot of this escalation in violence was the destruction and/or paralysis of many fledgling institutions of the Palestinian governing system.

The First Circuit said on remanding, they said on page 86 at 599 F.3d, First Circuit said: Defendants blame political extremism within the PLO and the PA for their Auralia (Phonetic spelling) decision to default.

Your Honor, Judge Lagueux was very mindful, I believe, of these various issues that say yes, there's no question we didn't answer. There's no question that we chose not to answer. That's not in dispute. But this little nuance of how bad is it, and rightly

or wrongly, Judge Lagueux wants to hear about it. He said flat out he wants, and again I have to say, it seems to me he's quite right, and the First Circuit also wants, I believe, ultimately to hear about this.

I can understand readily why they don't want to get into it. They have all kinds of conflicting stories about it, and it's an area that is going to count heavily against them when we're able to marshal the additional evidence that we want to put in about the willfulness of this default, and just how bad it was.

By the way, one of the premises for the motion for protective order is plainly erroneous. My brothers say as to our allegations, and I quote, they say: We are -- plaintiffs are mistaken. What they're talking about is when was Qurei a Prime Minister. They claim that the Court affirmed Magistrate Judge Martin's April 18, 2003 order granting plaintiffs' a default judgment against defendants on August 5, 2003, prior to Mr. Qurei becoming Prime Minister in October 2003. That is plain ordinary wrong. Your Honor knows better than anybody in this courtroom that all you did on April 18, 2003 was grant an ordinary default. No way the default judgment that they are now representing to the Court you entered on that day.

What we have is a situation where this man was Prime Minister from October 2003 to January 2006, so the judgment on your Honor's report and recommendation -- the report and recommendation was March 31, '04. Judge Lagueux entered judgment on that on 7/13/04. So what the defendants failed to point out, in fact they go a long way to obscuring it, if not misstating it, is that the Prime Minister Qurei in October 2003, to the period when your Honor made the report and recommendation, was the Prime Minister at that time, and had been for six months, and by the time the default judgment had entered in July of '04, he, at that point, was Prime Minister for another ten months. Then he remained in place as the Prime Minister an additional one and a half years after Judge Lagueux's final judgment.

Now, they seek a flat prohibition on the taking of this deposition, and your Honor knows that in the First Circuit a party seeking a protective order must demonstrate particular and specific facts to establish good cause for the order prohibiting the taking of depositions is an extraordinary measure, and the moving party has a heavy burden of showing extraordinary circumstances based on specific facts that would justify the order. It's really not my

burden to show, you know, some overwhelming need, although I believe we have demonstrated a real need. It's their burden to show the opposite.

It's also very important, your Honor, to remember the context that we find ourselves in. We have a judgment. They're petitioning to vacate the judgment. Again, I hate to keep using the word supplicant, but maybe that overstates it, but they're the petitioner. They've, you know, promised to engage in all kinds of discovery when you vacate -- well, when Judge Lagueux vacates the judgment, I can't even get discovery before we vacate the judgment that they pledge cooperation with.

They claim, by the way, that I've said that I only wanted to depose Qurei on two topics, and they rely on my letter which, by the way, your Honor, is document 529-5. My letter absolutely does not say that. It does not limit it to two issues, namely willfulness and timeliness. And I'll tell you, I'll read you verbatim what my letter says with reference to Qurei: Mr. Qurei's importance as a witness is obvious. He was the Prime Minister of the PA that is second in command after Arafat for a period of time, and then Abbas for another period between October 2003 and January 2006, which encompasses both the period of

defendants' intentional default and the first 18 months after the default. He's therefore a key witness, if not the key witness, regarding defendants' decision to default and their subsequent failure to move to vacate timely among other relevant topics. And I said that flat out. I never said that we were limiting to those issues.

Now, your Honor, the bottom line on many of this is, in some respects, being in this case it's felt like playing a game of whacker ball. I deposed Prime Minister Fayyad. He was as vague as vague could be about what was going on in terms of the decision not to move to vacate this. He wasn't in charge. He didn't miss. If the suggestion is that I feel like doing Qurei's deposition just to do his deposition, I don't know how anybody else feels in this case, but I've got other things to do and I'm trying to pin down exactly what the decision-making process, or lack thereof was, and I represent to the Court if your Honor reads any portion of the Fayyad depo and, in fact, tomorrow we're going to be talking about this very issue, and I'll demonstrate to your Honor that I tried like the devil to pin Fayyad down on some of these issues, and got absolutely nowhere. These defendants are telling the Court --

Here's another reason why I think Judge Lagueux might be interested in the willfulness issue of the decision-making process. What these defendants are telling the Court is they've changed their position. They respect the Court's now. They're going to honor it. How is Judge Lagueux going to understand what they're saying if he doesn't know exactly what they're position was in the first place. What motivated them to do what they did when they chose to get themselves defaulted. In any event, we shouldn't be second-guessing Judge Lagueux's order. What he said is what he said. This is another instance where, in effect, we're hearing arguments that the Judge really wasn't focused, he wasn't thinking. The Judge's order is entitled to be read for what it says.

THE COURT: Mr. Wistow, why would not a 30(b)(6) deponent be the appropriate and better way to get the information you seek, which is -- you didn't say this, but I will, a straight answer as to why they defaulted as opposed to the different explanations they offer? Don't read anything into my comments. I'm just trying to make it easy for Mr. Wistow.

MR. WISTOW: I appreciate that.

THE COURT: For the record -- excuse me,

Mr. Wistow. For the record, the Court looked at defendants' counsel when it made the statement that --

MR. WISTOW: Agreed.

THE COURT: All right. Go ahead, Mr. Wistow.

MR. WISTOW: The answer to that question is -- I want to say this in a cautious and fair way. I believe that the witnesses that I will be furnished for the 30(b)(6) are going to be selected for very very particular purposes, and that Qurei is somebody who they're trying to shelter and keep from this because he has knowledge that's important.

By the way, your Honor asked a very very telling question. Is there an affidavit from Qurei saying he doesn't know from anything about this case. The answer is not. And then when you hear the reason for it, the reason is if they put in an affidavit saying I have no knowledge about this matter, I'm going to bootstrap that into a reason to take his deposition. I mean, so the solution to that is, don't have him say it, have somebody else say he doesn't know anything about it. I suggest, your Honor, that turns logic absolutely on its head, and I warrant to your Honor that I would not have -- the word chutzpah was used before in this case, I would not have the chutzpah to say now I want to take his deposition to

test whether or not he knows something about it.

The reference in the Abdul Rahman declaration is nowhere near as clear cut as you've given the impression. Let me tell you what Abdul Rahman says. This is in document 562-2 in paragraph 10. Should I wait for your Honor to find it or --

THE COURT: I'll let you go ahead. I've seen the document. I can find it later.

MR. WISTOW: I warrant to you I'll read it correctly. It's paragraph 10. In such an environment, it was difficult to create the sort of permanent governmental institutions needed to respond to litigation in a foreign country. Thus, while the Palestinian government had begun substantial efforts to create a modern governmental structure in April 2005, and while this effort included the goal of creating a permanent entity designed to respond to foreign litigation, no such structure existed throughout the year 2006. Instead, and this is the important part, instead, various high level governmental decision-makers were contacted about the litigation from time to time in response to particular problems.

By the way, this happens to be another instance of this what is willfulness. There are all

sorts of levels of willfulness, some contemptuous of the court, some sort of representing a stupid choice. We're all over the place in what the reasons for this is. But here's the situation where it doesn't say that the PM doesn't know anything. There was an inadequate structure, they claim, and from time to time when decisions needed to be made they went to various unidentified high level government decision-makers. Now we can go on a search until doomsday to figure out who all this is. I'm asking only that I be allowed to depose the Prime Minister, who was the Prime Minister at that time, really the most important times we're talking about.

By the way, when he left in January 2006, the Prime Minister came from the Hamas party, known terrorists, and continued on until the spring of 2007 when Fayyad became Prime Minister, the man that I deposed, and it's been a job, your Honor, to try to track down who's doing what to whom.

My brothers say we also focused on timeliness, and that's not in the case. Somehow timeliness has been decided. That is absolutely, absolutely not the case. Indeed, the First Circuit in the decision reversing Judge Lagueux, giving the list of the various factors that -- I'll read you what it

says verbatim: A variety of factors can help an inquiring Court to strike the requisite balance. Such factors include the timing of the request for relief, the extent of any prejudice, and so forth and so on. The very first one that's mentioned is the timing. The First Circuit never, never said that this delay, which was 3 and a half years after the default judgment, default judgment 2004, the motion to vacate December '07, there never was a holding by the, indeed a full fledged argument, one way or the other, about the timeliness of this. What my brother is suggesting is, well, if it wasn't timely, why would the First Circuit reverse? Why didn't they just say it's not timely. Well, the answer is, that was never explored. Judge Lagueux took the position, which the Circuit did not agree with, that the willfulness portion was, per se, disqualifying to the motion to vacate and never reached the other issues. It's absolutely bizarre to suggest that timeliness is off the table, and what they're really asking you to do is to make a ruling, in effect, Judge Lagueux, I've ruled that timing is off, the -- timeliness is off the table, willfulness is off the table, there shouldn't be discovery in all of that. And I really think that that would do violence to what Judge Lagueux was -- intends to do,

and what the Circuit, more importantly intended Judge Lagueux to do. What the First Circuit said about the remand was this, and it includes the timeliness, the First Circuit said, and I quote: "The District Court enjoys a long familiarity with the case and that Court's factfinding capabilities put it in a better position to construct the facts specific balance that Rule 60(b)(6) demands." The First Circuit never evaluated and made a decision about whether this thing was timely or not. And I suggest, your Honor, that it's absolutely disingenuous to suggest that they did.

Now on the question is - the question of what is former Prime Minister Qurei today? We suggest that he is absolutely the equivalent of a member of the board of directors of that entity, and I say that --

THE COURT: Of which entity?

MR. WISTOW: The PLO. PLO. Forgive me, your Honor. And the reason I say that with some confidence is that matter was litigated in front of a U.S. Magistrate, as referred to my brother. He came down with a decision December 31, 2009, and from the name of the Magistrate, you can tell it's not somebody you'd want to fight with. It's Magistrate John J. O'Sullivan in the District Court in Florida, and what he specifically found was -- this is from his

decision: The plaintiff cites to the PLO's constitution, which provides that the executive committee -- and, by the way, it's been stipulated that Qurei is a member of the executive committee. The executive committee is the highest executive authority of the organization. It shall remain in permanent session. Its members devoting themselves exclusively to their work. It shall be responsible for executing the policies, programs, and planning approved by the National Assembly to which it shall be responsible collectively and individually. The executive committee shall assume responsibility for (a) representing the Palestinian people; (b) supervising the organization's subsidiary bodies; (c) issuing regulations. And Magistrate O'Sullivan goes on and on and on with these other responsibilities. And he says, and these are the Magistrate's words: The plaintiff has met his modest burden. There's references in the decision that cites the case law that when the plaintiff alleges that somebody is an employee, officer, or director, the burden of showing that is somewhat modest. We don't have to have the trial on the merits. Anyway, Magistrate O'Sullivan said the plaintiff has met its modest burden. Mr. Qurei's membership in the executive committee suggests

that he is a high ranking official within the PLO and his activities on behalf of the Jerusalem Affairs Department, including meeting with EU envoys, suggest to the Court that he is the functional equivalent of a director or officer of the PLO. The Court concludes that Mr. Qurei is subject to deposition by notice under Rule 3(b)(1). The defendants in that case argued that fine, if you're going to make him come to be deposed, then limit it to what he learned in his capacity as a director, officer of PLO, as has been argued here. And the Magistrate refused to put such a limitation on the scope. And here's the irony of this, and this is, to me a common theme. What the Magistrate did do by way of giving them relief was to say, if it's a big problem, you can substitute somebody else for Qurei, but if that person isn't able to answer the relevant questions, then you're going to have to produce Qurei. So what did they do? They produced, to avoid producing Qurei, they produced the Prime Minister of the Palestinian Authority to be deposed, and when he ended up not being able to answer questions, it was necessary to finally depose Qurei.

THE COURT: Where did they produce him?

MR. WISTOW: In Jerusalem.

THE COURT: Okay.

MR. WISTOW: I'm mindful of that issue, your Honor. The only thing I have to justify having him come here is my reluctance to go back there, and maybe more important, the fact that they are, in effect, the plaintiffs in this case, and I think -- well, your Honor asked the cogent question, it was done in East Jerusalem.

By the way, on this issue of whether or not O'Sullivan's decision represents collateral estoppel or not, it's certainly persuasive. He made certain findings of fact. I believe, by the way, that the decision is collateral estoppel. It involved the same defendants, the same lawyers, and the same issue about Qurei, and even though it was not a final judgment in the case itself, the final decision on a particular issue in the case, and there's case law supporting the proposition whether, for example, the Loomis case from the Second Circuit, 297 F.2d 80, addresses the issue. It says whether a judgment not final in the sense of 28 USC Section 1291 ought nevertheless be considered "final" in the sense of precluding litigation on the same issues. It turns upon such factors as the nature of the decision, that is, that it was not avowedly tentative, which this was not, the adequacy of the hearing, it was a full hearing in front of a Judge

Magistrate, and the opportunity for review. They chose not to perfect or take an appeal on it. Finality in the context here relevant means little more than the litigation of a particular issue has reached such a stage that a court sees no really good reason for permitting it to be litigated again. And there's other cases to the same effect. There's no need to go into a whole thing. It was not the final judgment in the case. No question about it. But, you know, how many times does this same issue have to be litigated?

The bottom line, your Honor, is this man was -- the only thing that I can say is they ought to be grateful that we didn't ask to have President Abbas deposed, but we were respectful of what's been going on with the recent peace talks, and certainly we didn't want to be in here saying we need a priority deposition of the President of the PLO and the PA who was, up until recently, actively engaged. But now we're being confronted with the statement that all knowledge derived from Abbas. We're trying to be modest. This guy was the second in command at a very very relevant time. There's been no categorical denial that he has, except from counsel, and a very indirect -- and by the way, I don't question that

counsel -- I'm not suggesting you're misrepresenting to the Court, I'm sure they were told he doesn't know from nothing, to use the colloquial phrase, but that isn't sufficient, your Honor, and the declaration or affidavit they rely on raises more question than is asked. I don't want to make the concession that, you know, we're ready to go to East Jerusalem to depose him, but I have a funny feeling that I'm not going -- that's my best shot, and so if I have to go to Jerusalem to depose him, that's what I'm willing to do, but he's a very very important witness in the context of this case, your Honor.

THE COURT: All right. Thank you, Mr. Wistow.

MR. ROCHON: Your Honor, counsel has said he's a very important witness, and you have about less on that than you do from us on the fact he knows nothing. You have to remember, he sat for a deposition. I am the lawyer who prepared him. I'm the lawyer who sat next to him during the deposition. I would take an oath as to the fact that he knows nothing about the circumstances of the default, or the willfulness of the default. Mr. Wistow knows nothing about him, and has still offered you nothing about him. He said he's important, and they have reason to

believe we're hiding him. Mr. Qurei is a difficult man. I'm not hiding that. You can read the deposition transcript and see it, but he knows nothing about the willful default in this case.

THE COURT: Which deposition transcript are you talking about?

MR. ROCHON: In Saperstein, the case where he was sat for a deposition.

THE COURT: Is that in this record?

MR. ROCHON: There's allusions to it in this record but I can get it to you quite readily.

THE COURT: Well, I'm quite frankly not looking for more papers, Mr. Rochon.

MR. ROCHON: I'm sure of that. I'm sure of that. But the fact of the matter is, your Honor, the plaintiffs want it all ways. They wanted to depose the Prime Minister. We suggested hold off on that until further discovery takes place. They said no, you've made him the centerpiece of this thing, take him now. We had not proffered him as the decision-maker regarding the willfulness of the default. We had not proffered him as that. He has been discussed in terms of foreign policy impact of the commitment to litigate these cases. They deposed him and they didn't get the answers they wanted on

these issues.

THE COURT: Who's "they"?

MR. ROCHON: Mr. Wistow. I'm talking about the current Prime Minister, Salam Fayyad.

THE COURT: I lost the transition there.

MR. ROCHON: Okay. Let me back up then because I think the transition matters. They sought the deposition of Salam Fayyad in this case. We said, hold off. You've got the e-mail it's in from the argument we had this morning where we argue, don't do it yet. They say they're not going to hold off. We've made him the centerpiece of this case. They're going to do it now. They resisted our request that they conduct further discovery first. We had not proffered him as the king explainer of the willfulness of default. Prime Minister Fayyad's relevance to this case is the foreign policy implications impacted these judgments on the entity, on this date -- excuse me, the PA, the PLO, and on the commitment to litigate these cases. That's what his declaration discusses. They then find out that he doesn't know as much as they would like about willfulness, and Mr. Wistow complains about it mightily here. Now they want to depose another guy who doesn't know anything about it, and they'll complain again. The means by which you

get collective knowledge of an organization about a series of steps is through a 30(b)(6) notice. Not by picking people out of the blue and finding out what they know. And they have still proffered nothing to you that suggests he has actual knowledge of anything to do with the decision-making in this case.

Mr. Wistow -- may I retreat?

THE COURT: You may.

MR. ROCHON: I want to get the affidavit he was quoting.

THE COURT: All right.

MR. ROCHON: He wanted to talk about paragraph 10 of Mr. Abdul Rahman's declaration, which is appended to our reply as Exhibit 2. And in paragraph 10, which he cites and read to the Court, what that is discussing is what the structure that existed throughout the year 2006 of the effort to design a permanent entity, to create a permanent entity designed to respond to foreign litigation. That's at the top of page 5 of that declaration. The next sentence says that instead, various high level governmental decision-makers were contacted about the litigation from time to time in response to particular problems. That's talking about 2006. This gentleman wasn't in office in 2006. So the relevance of this to

supposedly say, well, this declaration doesn't tell you anything about what he would know. In fact, what it says, is that the whole thing was a mess. It was being run out of the president's office. The Prime Minister wasn't delegated to answer -- to handle this until early 2007. This declaration was filed in the Saperstein case, that you've heard so much about, but not in an effort to avoid Mr. Qurei's deposition. This declaration was filed in connection with the motion to vacate default in that case. No Qurei issues involved. No effort to sidestep it.

Now, the variety of means by which you can get information about what this man might know, include this, include, of course, the fact he was deposed in another case, asked questions. No evidence surfaced there of him having involvement in this decision-making regarding the willful default. No suggestion he has knowledge here. The plaintiffs are saying they're trying to get to what my client knows about the decision-making, if you allow that kind of discovery to go forward. And I would suggest that the Court knows as well as I that the way they should have done it first was through the organizational deposition, not depose the Prime Minister and then complain that he doesn't know things that they think

he should know about that occurred when he was not in responsibility for these cases, and suggest that somehow those answers say that now they need to depose this gentleman. We told them they were going at it backwards. They proceeded anyway and now they complain about the answers they got. Now they want to depose this gentleman, and they'll complain about the answers they get. I would suggest to the Court that tomorrow when we resolve the 30(b)(6) motion that as we pointed out you'll either let discovery proceed on willfulness and timeliness issues or not, and if you do, they will get a witness, who's prepared to address them, and if the Court directs, the witness can speak to Mr. Qurei who will testify under oath about what he does not know. And I would suggest to the Court that is the way to proceed if you're going to allow discovery in these areas. The rest of these issues --

The only other thing I would say is plaintiffs have made something out of the fact that we took the date of default as a relevant date, as the date of the default judgment. I frankly think the date of default is a relevant date, but I apologize if my using that date in our pleadings has upset the plaintiffs. I would suggest to the Court that that date is a relevant date, vis-a-vis the Prime

Minister's service because the default occurred as of that date. Yes, the default judgment occurred later, but at that point there was the issue of damages that was being assessed, not the question of whether there was a default. Either way, there's no suggestion the man knew anything about either, however, so it's sort of a moot point.

On the issue of his status and whether he's an officer or director, again, I think it's kind of a sideshow to the question of whether or not we ought to proceed to discovery on these issues through this means or through a more reasonable means. I will say that Mr. Wistow said that he's a director. I don't believe they've even noticed him as a director. The question would be whether he's an officer.

And on the question of whether the decision of the Magistrate Judge in Florida is collateral estoppel, undoubtedly a fascinating legal issue. I would suggest it's one you don't need to reach because of the fact that we shouldn't be proceeding with his deposition at all. But if the Court is interested in that issue, and wishes to reach it, what you have is a decision to order a deposition. Say you ordered this deposition, an appeal of it that's never decided. The deposition goes forward. The case is dismissed on

motion of the plaintiffs with prejudice. And the question is whether or not that decision is entitled to the sense of finality such that it can never be litigated again. I would suggest to the Court that's not what the record in Saperstein would support here and the issue is clearly open before this Court, as to whether or not this person is an officer of the PLO such that he can be ordered to appear for a deposition and then asked about something that happened when he wasn't an officer of the PLO.

THE COURT: Did you say the case was dismissed by the plaintiffs with prejudice?

MR. ROCHON: Yes, dismissed by the plaintiffs with prejudice because they can't make their case, and they said so. Now they think it's because of some rulings they did not like and want to appeal it.

THE COURT: All right.

MR. ROCHON: It's all public, it's not a --

THE COURT: I just didn't understand how someone could dismiss the case with prejudice and take an appeal on that, but you've explained it.

MR. ROCHON: Your Honor asked -- as you can imagine, that's a point that one of our lawyers will be making in the Eleventh Circuit, if necessary.

Your Honor, on this issue of Mr. Qurei,

that's all we have. Thank you.

THE COURT: Thank you.

MR. WISTOW: May I just add --

THE COURT: Yes. You're going to have the final word, so go ahead, Mr. Wistow.

MR. WISTOW: Not if it upsets your Honor.

THE COURT: It doesn't. I'm not upset. I'm just -- defendants know they're just going to have to sit there and bear it in silence because you get the last word, Mr. Wistow.

MR. WISTOW: Thank you, your Honor. I only wanted to add that the Saperstein case, of which I know very little about, but I did read that deposition, Qurei was deposed on matters relating to supplying money to Hamas and not on the issues that we're talking about here. He was not asked about willful default or timeliness or anything of that nature.

THE COURT: So you would agree, Mr. Wistow, that there's nothing in that transcript that would indicate that he has knowledge about the decision in this case to default, to not to move to vacate?

MR. WISTOW: Yes, I have to agree with that.

THE COURT: All right, please continue.

MR. WISTOW: The affidavit -- again, I think

what's very very telling here is the minimal requirement of getting an affidavit from Qurei has not been adhered to at all, and what we're talking about is this declaration of Abdul Rahman. Portions were read to you. I'm not going to read extensively except to say paragraph 5, it also talks about reasons for not answering the case. It says no person within the Palestinian government structure had primary responsibility for monitoring the lawsuits in the United States. Primary responsibility. It doesn't say no one had any responsibility. The man was the Prime Minister at the time we're talking about, and can I prove, as I stand here now, that he has knowledge? No, I can't. But I would like to understand what the structure is. For example, if we ask him nothing else, as Prime Minister, all of these issues about, you know, they're saying to the Court, nobody had primary responsibility for monitoring the lawsuits, that the government was in chaos. I'd like to say to the Prime Minister, who was Prime Minister at that time, tell me about that. What was the chaos. Are they just allowed to come forward and make all of these claims and we can't test them? Are they going to say can they possibly suggest he has no knowledge about that? About what the state of the government

was that he was the Prime Minister? It's implausible. And for that reason, your Honor -- and I did never, I never suggested that I intended to limit the questions to timeliness and willfulness, but your Honor can see why willfulness becomes such an issue here. Every time you turn around there's an explanation for not answering the case, and that's why Judge Lagueux wanted that addressed.

THE COURT: All right, thank you, Mr. Wistow. All right, this will conclude the hearing for this afternoon on the motions that were scheduled for hearing today. I will resume hearing the remaining motions tomorrow morning at l0 o'clock. Court will stand in recess.

THE CLERK: All rise.

(RECESS)

C E R T I F I C A T I O N

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/sJOSEPH A. FONTES/

COURT REPORTER

NOVEMBER 10, 2010

DATE